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THE SOUTHWESTERN SOCIAL SCIENCE QUARTERLY

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THE QUARTERLY

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THE LOUISIANA LOTTERY COMPANY

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Lotteries of some form have played a part in the development of our nation from the earliest times. Before the Revolution, lotteries were common for selling lands, erecting forts, paving streets, building and supporting schools and colleges, but the greater number were for ecclesiastical purposes.¹ By 1832, the lottery business in nine states alone was said to have amounted to the sum of \$66,420,162.² A large portion of the public enjoyed the fascinating hazard of risking a small sum in the hope of gaining a greater amount. In fact, the greed of gambling concealed under the garb of charity or religion, though the veil may be thin, has covered a multitude of sins. The lotteries for public benefits such as churches, expenses of government, charities, transportation, and education, served to soothe the consciences of the scrupulous.

The evils of the lottery were slow to appear in many parts of the country. In the course of time, however, it was generally recognized that the investor in such schemes always stood to lose and the management to gain in direct ratio of their respective chances, which were overwhelmingly in favor of the lottery.

Lotteries were conducted in Louisiana for purposes similar to those in other states. Practically every religious denomination from 1800 to 1845 resorted to the lottery to raise funds. Likewise, the Masonic Lodge, the Medical Society of New

¹A. R. Spofford, "Lotteries in American History," *American Historical Association, Annual Report, 1892*, pp. 173-185.

²*Memoranda* concerning the rise and decline of the lottery system in the United States, by the United States Assistant-Attorney General for the Post Office department, p. 3.

Orleans, and various schemes for internal improvements used lotteries to fill their coffers.⁵ A "lottery" is defined as "a scheme by which one or more prizes are distributed by chance among persons who have paid or promised a consideration for a chance to win them, usually as determined by the numbers or tickets as drawn from a lottery wheel."

The Louisiana State Lottery Company was chartered as an aftermath of the War Between the States. The necessity of financial reconstruction was one of the impelling forces. The gambling concerns in New Orleans were corrupting officers and bribing the police and it was thought these evils could be reduced by making gambling legitimate.⁶ Besides, the scheme proposed would tax the extravagances of the people.⁷ Act No. 21 of 1866 licensed the vending of lottery tickets and \$50,000 of the proceeds from the tax was to go to the New Orleans Charity Hospital. All proceeds above this sum were to be turned into the general fund of the State.⁸ The act did not authorize the establishment of any lottery within the State, but only licensed the selling of lottery tickets as stated above. During the first year of its operation it was amended twice.⁹ The tax on such sales yielded the State \$36,000 in each of the years 1866, 1867, and \$28,000 in 1868.¹⁰ These acts paved the way for the act, No. 25 of 1868, chartering the Louisiana State Lottery Company, passed August 11. The title to the act was "An act to increase the revenues of the State, and to authorize the incorporation and establishment of the Louisiana State Lottery Company."¹¹ This act created probably the most colossal private speculative concern in the history of the nation.

The company was a potent factor in the history of Louisiana during the twenty-five years of its chartered existence. It not only provided an issue for the politicians, but it was an important force in the economic, social, and

⁵Ben M. Lislet, *Digest of Acts of Louisiana Legislature, 1804-1827*, Vol. II.

⁶Webster's *New International Dictionary*, 1939.

⁷*New Orleans Times*, January 27, 1866.

⁸*Ibid.*, February 27, 1866.

⁹*New Orleans Daily States*, May 27, 1890.

¹⁰*Acts of Louisiana Legislature*, 1866.

¹¹*New Orleans Daily States*, May 20, 1890.

¹²*New Orleans Daily Picayune*, July 18, 1868.

religious life of the State. It created a division of sentiment among the people of the commonwealth, and commanded the attention of the people of the nation. A combination of Federal and State laws drove it out of existence. The most widely known period of the lottery embraces the dramatic years 1890 to 1892, but the full story covers four decades, 1867-1907.

The Act of 1868 chartering the Louisiana State Lottery declared it was unlawful to sell any other lottery tickets in the State. The company was to pay \$40,000 annually for twenty-five years to the treasury of the State. The payment was to be in quarterly installments in advance, beginning with January 1, 1869. In return for this sum, the company was exempt from all taxes and other licenses. A bond of \$50,000 was required. Any other companies or individuals selling lottery tickets in the State after December 31, 1868, were subject to a penalty of \$1,000 to \$5,000. The capital stock was placed at \$1,000,000, with 10,000 shares at \$100.00 par value. The company could begin operations when one-tenth of the capital stock had been subscribed and the board of directors was to be composed of seven stockholders.

The principal arguments in favor of the bill were that the State was in need of revenue, and it was better to charter a Louisiana lottery and keep the money at home than to have the people speculate in foreign lotteries.¹¹ The bill was objected to for the following reasons: (a) immoral and corruptive influence on the community, (b) the monopoly granted the company, (c) no provision for requiring subscribed stock to be actually paid for, and (d) because the company was exempt from taxation.¹²

The monopoly conferred by the act was hidden under the avalanche of verbiage about the objects of incorporation. These objects were:

- (1) To protect that state against losses in foreign lotteries.
- (2) To establish a solvent home institution and to insure fairness.
- (3) To raise funds for education and charitable purposes for the citizens of Louisiana.¹³

The man who pushed the lottery bill through the legislature of 1868 was Charles T. Howard, who became the first president of the Louisiana Lottery Company. However, his

¹¹*New Orleans Daily Picayune*, August 4, 1868.

¹²*Ibid.*

¹³*Acts of Louisiana Legislature*, 1868, No. 25.

name does not appear in the list of incorporators nor anywhere else in the act. Howard previously had considerable experience with lotteries. He was the New Orleans agent of the Alabama State Lottery Company for six years immediately preceding the War Between the States, and from 1865 to 1868 he held a similar position with the Kentucky State Lottery.¹⁴

The poverty-stricken condition of Louisiana was used to persuade the loyal, honest, native son to vote for the bill, while the carpetbagger and ignorant negro were bribed. There is said to be ample proof that Howard bribed the latter class.¹⁵

Evidently the formal applicants for the charter were used as "dummies," in as much as nine days after passage of the act, John A. Morris, T. E. Simmons, and C. H. Murray acquired the rights of the corporation. A short time later Charles T. Howard received the share belonging to Simmons. The other real owners held their shares intact until the corporation was legislated out of existence.¹⁶

The Louisiana State Lottery Company completed its organization, and was ready for business December 31, 1868. Its office was at the corner of St. Charles and Union Streets. The daily drawings took place at four p. m. The Commissioners had charge of the two wheels used in the drawings. The drawings were public and every effort was made to convince the onlookers of their honesty.¹⁷ The lottery ticket buyer failed to realize the odds were always against him regardless of how honestly the drawing might be managed. The daily drawings of the company began January 2, 1869,¹⁸ and the lottery company zealously defended its monopoly privilege by prosecuting agents of other lotteries.¹⁹ It likewise defended its exemption from taxes and licenses.²⁰

The company used a variety of schemes in its drawings for several years. The published prices were for the whole

¹⁴*Jewell's Crescent City Register*.

¹⁵C. C. Buel, "The Degradation of a State." *Century*, February, 1892, XLIII, 622-623.

¹⁶*Ibid.*

¹⁷*New Orleans Republican*, January 2, 1869.

¹⁸*New Orleans Daily Picayune*, January 3, 1869.

¹⁹*Ibid.*, and *Lottery Co. vs Richoux*, 23 Louisiana Annual Reports, 743.

²⁰*Lottery Co. vs City of New Orleans*, 24 La. Ann. Repts. 86; *New Orleans vs Houston*, 26 U. S. Repts. 1.

tickets, but fractional parts of tickets were sold to make it possible for all who desired to play the lottery. In 1875 the company began featuring approximation prizes, or consolation prizes to those whose ticket numbers bore a resemblance to the numbers that won the larger prizes. The semi-annual drawings were differentiated from the daily and monthly by giving them such names as "Grand Golden", "Grand Extra", and "Extraordinary."²¹

The company was fortunate in securing the services of Generals P. G. T. Beauregard and Jubal Early as commissioners to supervise the drawings. The names of these two generals carried much prestige for honesty. A statement was read from these ex-Confederate generals testifying to the fairness of the drawings just before the "Extraordinary Drawings", June 5, 1877.²² A year later these commissioners informed the public as follows: "We will state that if, in the drawing we have supervised, it has happened that most of the large prizes have been drawn by the Lottery Company itself, it is owing to the fact that not nearly half of the tickets have been sold."²³

A grand jury of Orleans parish in 1872 reported that lotteries are *contra bonos mores*,²⁴ but no action resulted from the report. During the two following years the activities of the lottery company moved the grand jury to include in its report a request that the state legislature repeal the lottery law.²⁵ In a later report the grand jury thought the attorney general should institute a judicial investigation of the lottery company's claim to a legal existence.²⁶

It was stated that the company had every legislature in its power from 1868 to 1892. That there was evidence of truth in this statement was indicated in 1874, when the company influenced the legislature to defeat the bill providing for the creation of the New Orleans Lottery Company.²⁷ The Louisiana State Lottery Company was not only able to prevent the chartering of an opposition company, but it forced through the legislature two acts designed to forestall

²¹*New Orleans Daily Picayune*, June 4, 1877.

²²*Ibid.*, June 4, 1877.

²³*Ibid.*, June 13, 1878.

²⁴*New Orleans Democrat*, December 26, 1875.

²⁵*Ibid.*, December 19, 1875.

²⁶*New Orleans Democrat*, December 26, 1875 and June 5, 1878.

²⁷*New Orleans Daily Picayune*, February 25 and 26, 1874.

any attempts to sell foreign lottery tickets in New Orleans.²² One of these acts provided a penalty of \$25.00 for unlicensed selling of lottery tickets in New Orleans, one half of the fine going to the informer. The other act made it a misdemeanor to sell or draw illegal lottery tickets. The penalty provided was ten to thirty days in jail and a fine of \$50.00 to \$200.00, and proof of sale was sufficient evidence.²³

The success of the company in controlling the legislature plus the growing evils of the lottery stirred the opposition in 1876 to introduce three bills: (1) to repeal the company's charter; (2) to repeal the 1874 acts; (3) to investigate the charges of bribery in 1868 while chartering the company.²⁴

The Louisiana State Lottery Company was involved in numerous suits. Benjamin Wood in his suit claimed to have been defrauded of his just shares in the company. The suit was said to have been dismissed "on the exception of Morris that lottery gambling was contrary to good morals and could not be adjudicated upon by a court of justice."²⁵ Another suit was filed by a stockholder challenging the business methods of the company. This suit "was never tried, but was settled amicably out of court, and a part of the evidence has been stolen from the record."²⁶

The police courts of New Orleans were kept busy in 1878 trying cases involving the acts of 1874. Many were imprisoned without benefit of habeas corpus if unable to pay the fine. Such procedures almost precipitated a rebellion in New Orleans. The situation was so tense during the trial of the Agusti case that four justices of the Supreme Court sat with Judge Houston in open court "to sustain by their moral countenance the dignity of the Fourth District Court and indorse the action taken in the premises by the Honorable Judge."²⁷ There were rumors that Judge Houston would request Governor Nicholls to call out the militia.²⁸ The case precipitated a controversy among the newspapers in which the New Orleans *Democrat* denounced the lottery company

²²*House Journal*, Louisiana, 1874.

²³*Acts of Louisiana Legislature*, 1874.

²⁴*New Orleans Democrat*, January 18, February 10 and 11, 1876.

²⁵J. C. Wickliffe, "The Louisiana Lottery," *Forum*, January, 1892, XII, p. 569.

²⁶*Ibid.*, pp. 574.

²⁷*New Orleans Democrat*, May 30, 1878.

²⁸*Ibid.*, May 29 and 30, 1878.

and charged the lottery controlled the *Picayune* and the *Times*. The *Picayune* said it was a question "for lawyers to discuss and for judges to decide . . . it would be supremely ridiculous to inaugurate a civil war to decide a question of law."⁸⁰

There were other criticisms of the company in 1878. The daily drawings were not only denounced but the charge was made that there was no just proportion between the terms and price of tickets and the prizes drawn; that the prizes were smaller than in European countries where lotteries were in existence.⁸¹

To offset this criticism, the lottery company induced Generals Beauregard and Early in 1878 to make a statement designed to win the public. It was: "As to the objection that the Louisiana State Lottery Company is a monopoly, we do not see that it is a very serious one, but are of the opinion that it is for the better that the charter confers a monopoly. If lotteries are all great evils, then it is better that they should exist as monopolies than that the right to conduct them should be general."⁸² The lottery company also launched a campaign against the opposition. The first of these was a \$25,000 libel suit against the editor of the *New Orleans Democrat*. Additional suits were filed against the paper until the total amounted to \$90,000 by the end of 1878.⁸³ The lottery company gained control of the *Democrat* before the case was decided and the suit was dropped.

In August, 1878, a New Orleans grand jury reported that the State Printer, George W. Dupre, had overcharged the State for work done. Dupre was connected with the *Democrat*, and that paper accused the lottery company of instigating the charges.⁸⁴

Many Democratic political leaders were demanding a constitutional convention by 1878 to change the carpetbag constitution of 1868. A meeting of the Real Estate Owners' and Taxpayers' Union of New Orleans in February was discussing the advisability of a constitutional convention when a group of rowdies broke up the meeting. The leaders of these rowdies were said to have been hired by the lottery

⁸⁰*New Orleans Daily Picayune*, May 31, 1878.

⁸¹*New Orleans Democrat*, March 14, and June 16, 1878.

⁸²*New Orleans Daily Picayune*, March 10, 1878.

⁸³*New Orleans Democrat*, May 15, and December 31, 1878.

⁸⁴*Ibid.*, May 15, 1878.

company for that purpose.⁴⁰ The rumor, whether true or false, plus the charge that the lottery company bribed members of the legislature to vote for the proposed constitutional amendments and against any measure providing for a convention,⁴¹ furnished the basis for the press of the State to advocate a constitutional convention as well as to launch an attack on the lottery company.⁴²

The rural section of the State was aroused against the lottery company, and they were against anything the lottery was for. Hence, the issue in the legislature of 1878 was the charter of the company. This accounts for the demand for a constitutional convention. A bill calling for such a convention was introduced by Hon. E. E. Kidd of Jackson parish.⁴³ The bill was postponed and an agreement was reached to submit twenty amendments to the voters on November 5, 1878.⁴⁴ Another amendment was added by the special session of the legislature that year. These amendments provided for many important changes in the fundamental law, plus the reorganization of the judiciary and the removal of the capital to Baton Rouge. The proposed amendment to abolish the lottery company failed to pass the legislature by the necessary two-thirds vote, the vote being 58 yeas and 48 nays.⁴⁵ The electorate desired the constitution rewritten and defeated the twenty-one proposed amendments.⁴⁶

The anti-lottery men contended that the lottery company's charter was wrong, since the contract of 1868 was *ultra vires*.⁴⁷ Hence, there was nothing to prevent the State refusing to license any longer, such a licensed corporation. Two attempts were made to have the legislature of 1878 pass a law repealing the charter of the lottery company.⁴⁸

The main argument in favor of the lottery company during the first decade was that it had helped finance churches, schools, hospitals, and highways. On the other

⁴⁰*New Orleans Democrat*, February 17, 1878.

⁴¹*Ibid.*, February 18, 1878.

⁴²*New Orleans Democrat*, the *Lake Charles Echo*, *Opelousas Courier*, *Lafayette Advertiser*, *Alexandria Democrat*, *Minden Democrat*, *Ouachita Telegraph*, and *New Iberia Sugar Bowl*.

⁴³*New Orleans Democrat*, February 27, 1878.

⁴⁴*Acts of Louisiana Legislature*, 1878.

⁴⁵*New Orleans Democrat*, February 17, 1878.

⁴⁶*Ibid.*, November 6, 1878.

⁴⁷*Ibid.*, February 9, 1878, and March 1 and 7, 1878.

⁴⁸*Ibid.*, March 12, 1878.

hand, the anti-lottery men pointed it out as a great political evil.⁶⁰ Furthermore, it was a licensed gambling enterprise degrading the morals of the people, and the company's power was indicated by Howard's alleged control of the press.⁶¹ In fact the feeling against the company was well stated as "Ever since its institution it has been a nuisance stinking in the nostrils of all good men. It had its origin in the corruption of a corrupt legislature—a legislature of thieving aliens, ignorant and debased negroes, and the depraved of our own people." Howard was quoted as saying "Give me the monopoly of a wheel in Louisiana and I'll rule the State."⁶²

The company faced more trouble when Act No. 44 passed the Louisiana legislature in January, 1879, and was signed by Governor Nicholls, March 27, 1879.⁶³ One section of the act abolished the Louisiana State Lottery Company and another fixed the penalty of misdemeanor at sixty days or \$100.00 fine or both, with one-half of the fine going to the informer and the other half to the parish in which the offense was committed. A ticket was made sufficient evidence for conviction, and the act was to go into effect March 31, 1879.⁶⁴

The state auditor refused to accept the quarterly payment of \$10,000 from the lottery company April 1, 1879, because the Act of March 27 of that year had repealed the company's charter. A legal battle followed⁶⁵ for two months before Judge Billings declared the act unconstitutional, saying,

Where a corporation has been called into existence by a state legislature, for a definite object, declared in the act creating it, and has powers and faculties given to it which are in its nature and operation pertinent to its sole object and necessary to its very existence, its rights and franchises cannot be swept away by a repealing act of the legislature of the state which created it.

⁶⁰*New Orleans Democrat*, February 28 and May 6, 1877.

⁶¹*Ibid.*, May 24, 1878. The *Democrat* pointed out: "The man who buys a ticket every day at every drawing will have only one chance in 84 years to draw even the \$243.35 prize. Old Methusaleh himself had he bucked up against the lottery from his earliest childhood to the day of his death and bought a ticket every day, would have found himself winner of \$2,678.85 after having spent about \$250,000 on the lottery."

⁶²The *Natchitoches Peoples' Vindicator*, June 1, 1878.

⁶³*Acts of Louisiana Legislature*, 1879.

⁶⁴*Act of Louisiana Legislature*, 1879.

⁶⁵*New Orleans Democrat*, April 1, 6, 9, and 10, 1879.

The Lottery Company, victorious in the courts, had yet to deal with the Constitutional Convention of 1879. Ordinances dealing with the lottery were offered on the fifth and sixth days of the convention, but the question was not agitated, according to the records, until the sixty-third day. The Lottery Company became the big issue, consuming eight days of debate, with practically every member speaking. The issue was definite with the company attempting to get its charter recognized by the Constitution and the anti-lottery forces trying to prevent it. Article 167 as adopted was a compromise. Lotteries were tolerated until 1893, but the monopoly of the company was abolished. The constitution was ratified by popular vote in December, 1879.

The State Supreme Court ruled that Article 167 repealed Act 44 of 1879 conditionally, restoring the charter of the Lottery Company except its monopoly privileges.⁵⁵ The company now focused its efforts on gaining control of its enemy, the New Orleans *Democrat*. This was accomplished by a dubious federal court decision which forced down the value of State scrip and then up again, bankrupting the owners of the *Democrat*.⁵⁶

The stock of the Lottery Company in 1879 was quoted at \$35.00 for a share of \$100.00 par value.⁵⁷ The semi-annual drawing on June 17 was described at such length as to require two columns of a newspaper. The drawing took place at the Lottery Building and was in charge of Generals Beauregard and Early. General Early called the number of the ticket and General Beauregard called the sum of money that went with the ticket. The large wooden wheel containing the tubes with sums of money were closed and locked. After each drawing of twenty numbers the large wheel was turned. It was announced that the next grand drawing would be held as usual in one of the theaters with the accustomed free concert.⁵⁸ Four of the nine principal tickets of the grand drawing were sold in New York; two in St. Louis, and one each in Louisiana, Washington, D. C., and Louisville, Kentucky. This indicated that the tickets were sold rather generally over the nation. The drawing of December 17, 1879, was

⁵⁵*State ex rel Carcass vs Judge*, 32 La. Annual Reports, p. 721.

⁵⁶*New Orleans Daily States*, September 14, 1890.

⁵⁷Kendall, *History of New Orleans*, II, p. 486.

⁵⁸*New Orleans Times*, June 18, 1879.

⁵⁹*Ibid.*, December 17, 1879.

held at the Grand Opera House with a concert to celebrate "its lawful renaissance." It began at 11 a. m. and lasted until 2:30 p. m. Great care was exercised to assure the accuracy of the numbers.⁸⁰

The Lottery Company enjoyed its greatest financial success in the decade 1880 to 1890 for the stockholders received 110 per cent dividends in 1887; 120 per cent in 1888; 170 per cent in 1889; and 125 per cent in 1890.⁸¹ It was able to defeat several attempts in the State legislature to destroy or handicap its business. No less than four such bills were introduced in 1880, but the company was successful in preventing a rival being chartered. The company boasted at the semi-annual drawing June 15, 1880, that "This is the only lottery in any State ever voted on and indorsed by its people."⁸²

The legislative attacks on the company in 1882 and in 1884 were along two lines. The first was to abolish the lottery and the second was to charter rival companies, thereby reducing the profits. There was no lottery legislation considered in 1886 and 1888.⁸³ An opponent of the lottery in 1884 with a mathematical turn of mind figured that "from 1872 to 1884 there have been fourteen sessions of the legislature, at an average cost of \$1,500 per day. The lottery question has retarded and occupied not less than ten days of each session. This represents a time expenditure of 140 days and a monetary equivalent of \$200,000; with all this expenditure of wind and money the lottery company is still impregnably behind its charter."⁸⁴

The Lottery Company was involved in several suits during this prosperous decade and the company came out victorious in both State and Federal courts. November 12, 1879, Postmaster General D. N. Key issued an order forbidding the postmaster at New Orleans to pay any money order, or to deliver any registered letter to M. A. Dauphin. This led Dauphin to enter suit in the United States Supreme Court against Key. The case was dropped after Key, on February 27, 1880, suspended his order of November 12, 1879, and resigned a short time later. On September 19, 1883, Postmaster-General Gresham ordered the New Orleans

⁸⁰C. C. Buel, "The Degradation of a State." *Century*, XVIII, pp. 624.

⁸¹*Natchitoches Peoples' Vindicator*, May 15, 1880.

⁸²*Louisiana House and Senate Journals*, 1882, 1884, 1886, and 1888.

⁸³*New Orleans Times-Democrat*, June 5, 1884.

postmaster to "deliver to the New Orleans National Bank no registered letters and redeem no money orders payable to it; but deal with the same as directed by the order of this department of November 13, 1879 . . . I am in possession of trustworthy information that this bank has been and still is receiving through your office registered letters and money orders for the benefit of M. A. Dauphin, in pursuance of his public directions."⁴⁴ The lottery company was successful in its court action and won again in 1884 when the right of Dauphin to use the mails was challenged.⁴⁵ But the most complete victory was won in 1886, when the assessors of New Orleans attempted to tax the properties of the company. The United States Supreme Court not only denied this, but decided the Louisiana legislature could not refuse the right to operate a lottery where such right has been given by the provisions of the State constitution.⁴⁶ The public sentiment was undoubtedly against lotteries, yet the Lottery Company was uniformly successful in court, first, because of the vague language of the laws and second, because the company was able to engage the very best legal talent available.

The Lottery Company's success in court might have been a prime factor in its downfall. At any rate, two libel suits against Colonel A. K. McClure of Pennsylvania, that were never tried, aroused damaging sentiment against the company. Colonel McClure took vengeance on Louisiana in his book⁴⁷ and the "Nation" carried an editorial not complimentary to the State because of the lottery.⁴⁸ The other effect of the libel suits was that the Pennsylvania Congressmen carried the fight against the lottery company into Congress, urging legislation to deprive lotteries of the use of the mails as well as prohibiting express companies from transporting lottery materials.

A financial exhibit of the Louisiana Lottery company is found in the Congressional Record of ten regular and two special drawings for the year, 1890.⁴⁹

⁴⁴*New Orleans National Bank vs Merchant*, 18, Fed. Rep., 841.

⁴⁵*U. S. vs Dauphin*, 20 Fed. Rept. pp. 625 (Circuit Court, E. Dist. La., May 12, 1884).

⁴⁶*New Orleans vs Houston*, 119 U. S. Repts. 265.

⁴⁷A. K. McClure, *The South*, Philadelphia, J. B. Lippincott & Co., 1886.

⁴⁸*The Nation*, April 28, 1887, XLIV, p. 353.

⁴⁹*Congressional Record*, House of Representatives, XXI, part 9, 51st session, p. 8713.

Income:	Ten drawings, 1,000,000 tickets @ \$20.00 each equals
	\$20,000,000.00
	Two drawings, 100,000 tickets @ \$40.00 each equals
	\$8,000,000.00
Expenses:	Prizes, ten drawings equals
	\$10,548,000.00
	Prizes two semi-annual drawings
	\$4,219,200.00
	Commission to Agents
	\$2,000,000.00
	Advertising
	\$2,000,000.00
	All other expenses
	\$1,000,000.00
	Net Profits
	\$8,232,800.00

Citizens of New Orleans condemned the daily drawings more than any other, because they consumed the earnings of the poor and encouraged stealing among the servant class. Policy shops were found at convenient places over the city, the number reaching 108 at one time. These were either operated or controlled by a ward boss or the politicians. The daily drawings sold two kinds of tickets—one with three printed numbers, the other was a "policy" which gave the purchaser the privilege of writing in his own combination of three numbers. The local agent of the "policy shops" averaged \$60.00 to \$500.00 daily in receipts. He made his return each day to the central office in time for the drawing to begin at 4 p. m. The agents were paid a commission of 10 per cent on "policy" and 15 per cent on printed tickets.

The daily drawings sold tickets at one dollar, but fractional parts might be bought at 25 cents, 50 cents, and 75 cents. From seventy-five to seventy-eight numbers were usually drawn therefrom. The winners were determined by a plan explained on the back of the ticket. It has been calculated "That the chance to win a capital prize is one in 67,525, and when you win it, you only get \$4,275.40 for \$1.00, as against \$15,000 for \$1.00 in the monthly drawing with a chance of one in 100,000. The chance to win a prize of \$4.25 is one in 1,237. The chance to win a prize of \$1.70 is as one to nineteen."

It was reported the company used about \$120,000 worth of stamps annually on the 6,000,000 pieces of mail sent out. The company resorted to advertising in cheap sporting newspapers to reduce the cost of advertising by mail. It sent out 4,947 pounds of sample copies of one paper, representing 50,000 copies, the postage on which amounted to \$49.47. Thus,

⁹⁰C. C. Buel, "The Degradation of a State," *Century*, February, 1892, XLIII, p. 620.

instead of paying two cents per ounce on letters, the same information was put in newspapers and sent at one cent per pound.

The responsible operators of the Louisiana Lottery Company were generous to charity and to public enterprises, the Howard Memorial Library, and the Confederate Memorial Building in New Orleans may be cited as examples of donations of the Howards.⁷¹ In 1890, the Lottery Company sent Governor Nicholls a check for \$100,000 "to be used in your discretion to protect the people of Louisiana against the inundation now apparently so imminent in consequence of the threatening condition of the river."⁷² Governor Nicholls returned the check with the statement that "on the eve of the session of the Legislature during which the renewal or extension of your charter will be acted upon, I have no right to place the people under obligation to your company in however small degree by my acceptance of a gratuity fund."⁷³ The money was distributed by the company directly to the people to relieve the distress when the levees broke.⁷⁴

A month before the Legislature met in 1890, it was announced that the company would propose to pay the State \$500,000 instead of \$40,000 per year for a license to re-charter.⁷⁵ The message of Governor Nicholls to the Legislature May 12, 1890, had eight of the twenty-five pages devoted to warning against rechartering the lottery by constitutional amendment.⁷⁶ The Governor made his position toward the Lottery Company clear. He considered it a political and moral evil. The following day the company offered to pay \$1,000,000 annually for a license, and two days later Morris explained he doubled the amount merely to meet "the absolute wants of the State."⁷⁷

Space does not permit a detailed account of the legislative move to recharter, but it can be stated that the bill had its rabid supporters as well as bitter opponents. The bill to submit the question of rechartering to a vote was

⁷¹Rightor, Henry, *History of New Orleans*, pp. 264; *New Orleans Daily States*, May 11, 1890.

⁷²*New Orleans Daily States*, March 15, 1890.

⁷³*Ibid.*, March 16, 1890.

⁷⁴*Ibid.*, April 19, 1890.

⁷⁵*New Orleans Daily States*, April 18, 1890.

⁷⁶*House Journal, Louisiana Legislature*, 1890, pp. 7-32.

⁷⁷*New Orleans Daily States*, May 13, and 15, 1890.

reported out of the House Committee with majority and minority reports. The majority argued it was democratic to let the people decide; and the State needed the money for flood relief, schools, and the insane, the blind, deaf, and dumb. The minority report cited the reports of the auditor and treasurer showing a surplus in the general fund for 1890, and stated the charitable institutions would be provided for in the general appropriation bill. As for the flood devastation, the Federal government should build, maintain, and control the levees. Figures were presented to show that if the Lottery Company paid taxes proportionate to other businesses, the taxes would total \$1,772,000. Thus, the State would lose by accepting \$1,000,000 license fee.⁷⁰ In voting to submit the rechartering proposition, to a vote of the people the representatives gave various reasons for voting "yes" or "no". The bill passed the House after a lengthy struggle. It was said that just as a vote was about to be taken a recent convert was seized with sudden illness and had to be taken from the hall. Again, when a vote was about to be put a pro-lottery legislator was seized with paralysis, was removed from the chamber and was unable to attend any more during the session. For the second time the vote was postponed.⁷¹ A correspondent said "its passage was effected during the most violent storm which had ever raged in Baton Rouge. The rain poured in torrents, the winds lashed the walls of the State House in fury, the deep-toned disapprobation of the outrage which was being perpetrated, the lightning played almost constantly around the building, and just as the representative who had it in charge cast his vote, the capitol was struck by lightning. It seemed as if the Supreme Ruler of the Universe was expressing his condemnation of what was being done."⁷² The House passed the bill by two-thirds majority.

The opposition in the Senate was based on constitutional, moral, and political grounds. Senator Foster said, "For my country and her honor, for my State and her good name, for her dead and for her living, I vote No." Senator Posey said "For my country and her poor, for her helpless and insane, for her onward march and future, I vote Yes."⁷³

⁷⁰*House Journal, Louisiana Legislature*, 1890 pp. 320-321.

⁷¹*Ibid.*, 1890, pp. 430-432 and 523-524.

⁷²*The New Delta* (New Orleans), May 12, 1892.

⁷³*Senate Journal of Louisiana*, 1890, pp. 334 and 337.

These reasons were uniquely stated yet they indicate the difference between the pro-lottery and anti-lottery factions. The Senate passed the bill with the exact two-thirds vote and the Governor vetoed it, saying: "At no time and under no circumstances will I permit one of my hands to aid in degrading what the other was lost in seeking to uphold . . . the honor of my native State. Were I to affix my signature to the bill I would indeed be ashamed to let my left hand know what my right had done."²²

The lottery bill was in the nature of a constitutional amendment and provided (1) for chartering the lottery company of John A. Morris for twenty years at \$1,250,000 per year, beginning January 1, 1894, (2) \$350,000 of this sum to go to the public schools; \$350,000 to levees; \$150,000 to charities; \$50,000 as pensions to the Louisiana Confederate veterans; \$100,000 to New Orleans drainage; \$250,000 to the general fund, (3) Morris must file acceptance and bond within a specified time, (4) the corporation to be named the Louisiana Lottery Company with capital stock of \$5,000,000 divided into 50,000 shares of \$100 par value each, (5) the corporation be exempted from all taxes, licenses and assessment of any kind, (6) no other lotteries to be chartered except on similar terms and at least \$1,000,000 license per year, (7) the Secretary of State to publish the amendment within thirty days after January 1, 1891, and (8) the electorate was to vote on the amendment at the next general election.²³

The legislature undertook to over-ride the Governor's veto with the House voting 66 to 31 to do so. The Senate passed the measure the first time with the exact two-thirds necessary. Since then one of the senators had become critically ill, and was unable to attend the sessions of the Senate. It was evident the pro-lottery men did not have the two-thirds vote required in the Senate, so the measure was referred to the judiciary committee. This committee rendered a majority report to the effect that there was "no necessity or propriety under the Constitution to submit a bill proposing a consti-

²²*Senate Journal of Louisiana*, 1890, pp. 413-415. Nicholls lost his left arm at the Battle of Winchester and a leg at Chancellorsville in the War Between the States.

²³*Journal of House of Representatives of Louisiana*, 1890, pp. 430-432, and 523-524.

tutional amendment to the Executive for approval."⁴⁴

The Secretary of State refused to promulgate the lottery bill because of irregularities in its passage, and John A. Morris brought suit to compel the secretary to submit the lottery amendment to the people.⁴⁵ The State supreme court finally decided the case in favor of Morris.⁴⁶

Following this court victory of the Lottery, a two-year campaign for a new charter ensued. Many good men and most of the press supported the Lottery, likewise there were good men fighting the lottery. An Anti-Lottery League was formed in 1890, and soon had the State well organized. It sought to influence public opinion and did enlist most of the clergy of every denomination, but won only a small section of the press. Many demonstrations were held to win the public. During the summer of 1891, the Women's Anti-Lottery League was formed to give moral support to the men's organization.

The Progressive League was formed July 29, 1890 "to urge the people and to endeavor to foster all measures calculated to promote the public welfare, particularly in the matter of the improvement of the school and levee systems of the State, to provide for the payment of the public debt, and to promote immigration; and with these ends in view, to use all honorable means to secure the adoption by the people of the proposed lottery amendment."⁴⁷

Both factions during the two-year campaign held political meetings, supplemented with barbecues, throughout the State.⁴⁸ Much excitement was created but no open violence occurred. The lottery issue furnished capital for the politicians and both factions made startling charges. The lottery managers said they had \$6,000,000 with which to carry the elections of April, 1892.⁴⁹ Governor Nicholls was charged with broken faith in accepting campaign contributions in 1888 from the lottery. He presented evidence to

⁴⁴*Journal of the Senate, Louisiana*, 1890, pp. 425.

⁴⁵*New Orleans Daily States*, December 16, 1890.

⁴⁶43 *La. Annual Reports*, pp. 609. *State ex rel Morris vs Mason*, Secretary of State.

⁴⁷*New Orleans Times-Democrat*, August 3, 1890.

⁴⁸*New Orleans Times-Democrat*, August 21 and 31, 1891. *New Orleans Daily Picayune*, August 28, September 13 and 14, 1891.

⁴⁹*The New Delta*, (New Orleans), May 27, 1891.

prove this was not true.⁹⁶

The strongest argument advanced by the lottery was that the State needed money. The State debt was over fourteen millions,⁹⁷ but it was pointed out the increased assessment could take care of the debt. All the old arguments for and against lotteries were reviewed. Clergymen of all denominations denounced lotteries and the religious press was unanimous in its opposition.⁹⁸

The lottery fight attracted the attention of the nation and President Harrison in 1890 asked Congress to enact "severe and effective legislation to enable the Post Office Department to purge the mails of all letters, newspapers, and circulars relating to the business."⁹⁹ Congress responded with House Bill No. 11569, which was signed by the President, September 19, 1890. The measure was essentially a perfection of previous legislation against lotteries.¹⁰⁰ The Lottery Company turned to conducting business by express, and advertised to pay all charges on orders of \$5.00 or more.¹⁰¹ Three of the express companies refused to accept the lottery business.¹⁰²

The press was affected by the law as papers containing lottery advertisements could not be sent through the mails. Many large city papers resorted to publishing two editions, one containing lottery advertisements to be sold on the streets, the other without lottery advertisements to be sent through the mails.¹⁰³ At first the press said the law could not be enforced and attacked it.¹⁰⁴ The Attorney General of the United States soon proved the law could and would be enforced.¹⁰⁵ The law was tested in the courts and declared to be constitutional.¹⁰⁶

The elections of State officers in 1892 had two issues to settle; the fate of the lottery amendment and who was to

⁹⁶*New Orleans Daily States*, July 27, 1890.

⁹⁷*Weekly Louisiana Review*, (Baton Rouge), May 28, 1890.

⁹⁸*New Orleans Daily States*, April 9, 1890.

⁹⁹Richardson, *Messages of the Presidents*, IX, pp. 80-81.

¹⁰⁰U. S. 51st. Cong. 1st. Sess. House, *Rept.* 2844. U. S. 51st. Cong. 1st. Sess. Senate, *Re i.* 1579.

¹⁰¹*New Orleans Times-Democrat*, September 19, 1890.

¹⁰²*Ibid.*, October 24, 1890. *New Orleans Daily Picayune*, October 24, 1890.

¹⁰³*New Orleans Item*, March 15, 1891.

¹⁰⁴*New Orleans Daily States*, August 3 and 28, September 19 and 20, 1890.

¹⁰⁵*New Orleans Daily Picayune*, October 29, 1892.

¹⁰⁶*Ex parte Dupre*, Rapier, 143, U. S. Reports, pp. 110.

control the Democratic party in the State. The Anti-Lottery League sought and made an alliance with the Farmers' Union at its annual State convention in August, 1891.¹⁰¹ The agreement was opposed by groups in each faction. The anti-lottery men defended the combination as being a fair division of State offices between the two sets of Democrats in the interest of harmony. Two months later the compact was denounced officially by the Farmers' Union and was abandoned.¹⁰² The Democratic State Central Committee could reach no compromise between the pro-lottery and anti-lottery Democrats, but set December 16, 1891, as the date of meeting of the Democratic State Nominating Convention in Baton Rouge.¹⁰³ Ex-Governor Samuel D. McEnery announced as a candidate for governor. The political rallies changed from "lottery meetings" to "McEnery meetings."¹⁰⁴

All efforts toward unification at the nominating convention failed and each faction nominated its ticket. Murphy J. Foster headed the anti-lottery while Samuel D. McEnery led the pro-lottery ticket.¹⁰⁵

The anti-lottery group waged a systematic and vigorous campaign in every parish, with six parties of speakers in the field at a time. Meetings were held almost every night in New Orleans with one wagon for the speakers, and a separate one for the band. It was important that the people be entertained then as well as at the present time.

The pro-lottery men put up a worthy fight with two ex-governors on the ticket.¹⁰⁶ The anti-lottery leaders were accused of sacrificing the Democratic party and Nicholls came in for his share of criticism. The Republicans were

¹⁰¹*New Orleans Daily Picayune*, August 4, 1891.

¹⁰²*Ibid.*, October 3, 1891.

¹⁰³*New Orleans Times-Democrat*, October 15, 1891.

¹⁰⁴McEnery had been governor from 1881 to 1888 and was in favor of the lottery company.

¹⁰⁵The Anti-ticket was: Foster, Governor; C. Parlange, Lt. Governor; W. W. Heard, Auditor; M. J. Cunningham, Atty. Gen.; J. A. Pickett, Treas.; A. D. Lafargue, Supt. of Ed.; T. S. Adams, Sec of State. The Pro-lotteries were: S. D. McEnery, Gov; R. C. Wickliffe, Lt Gov.; L. F. Mason, Sec. of State; O. B. Steele, Auditor; J. V. Calhoun, Supt. of Ed.; G. Montegut, Treas.; E. W. Sutherlin, Atty. Gen. *New Orleans Times-Democrat*, December 19 and 20, 1891.

¹⁰⁶Samuel D. McEnery and R. C. Wickliffe were the ex-governors.

divided, also, over the question and each faction together with the People's party put forth tickets.¹⁰⁷

Much rivalry existed between the two State Central Committees of the Democrats. A compromise was finally effected providing for a white primary March 22, 1892 to select the Democratic nominee.¹⁰⁸ It required five days for a joint committee of seven to declare the winners.¹⁰⁹ The campaign continued until the general election with increasing intensity. The official vote gave Foster 79,388 and McEnery 47,037 in the general election.¹¹⁰ The amendment to re-charter the lottery was defeated by 4,225 for and 157,422 against.¹¹¹

The powerful Lottery Company had been whipped. It only remained for the legislature to enact laws in 1892 and 1894 that would put the finishing touches to the victory. Congress and Federal officers had aided in driving the lottery business from the nation.

¹⁰⁷The pro-lottery Republican ticket was headed by Albert Leonard, and the anti-lottery Republicans were led by H. C. Warmoth. The People's Party nominated R. L. Tannehill for Governor.

¹⁰⁸*New Orleans Daily Picayune*, February 20, 1892.

¹⁰⁹*New Orleans Item*, April 5, 1892. Foster's majority was stated as 570, while the pro-lotteries claimed McEnery won by 1,570.

¹¹⁰*Louisiana House Journal*, 1892.

¹¹¹*New Orleans Times-Democrat*, July 5, 1892.

COMPARATIVE ASPECTS OF FASCISM

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With the gradual recognition of the similar character of movements in various countries to the original Italian bearer of the name "fascism" the term has tended to acquire a generic sense. This tendency was at first contested by writers who saw a logical difficulty in associating chauvinistic tendencies having varying local historical bases with a movement which claimed for itself the peculiar expression of the special virtues of a particular nation. While fascism continued to be exemplified in only one instance by a government in power, the slowness with which foreigners came to have any real understanding of the Italian movement obstructed a general recognition of an essential similarity.

Subsequent developments, particularly the success of the National Socialist movement in Germany and its entrance in a characteristic manner into international power politics, have afforded a clearer basis for judgment and have caused a general recognition of a similarity that justifies the use of the term fascism for a particular genus of political movements and governmental régimes. While differences in national circumstances make difficult in some cases the exact application of this classification, still movements expressing themselves in the governments of Germany, Spain, and Portugal, and less completely in that of Japan, and existing as significant opposition forces in France, Rumania, Belgium, and other countries possess a sufficient uniformity of characteristics to justify their being grouped with the Italian original, even were these movements any longer inclined to mask their international affinity.

In order to define fascism as a political classification it is not merely necessary to establish the essential unity in national diversity of what may be called the type species with its leading foreign counterparts, but it is also desirable to differentiate the other recognizable groupings of existing political tendencies. This latter aspect, involving a world-wide classification of political tendencies, need not actually possess the difficulty which the broadness of its areal scope would suggest, if certain limiting factors are borne in mind.

In the classification of political movements it is essential to remember that the modern national form of state arose

and developed in the environment of a particular form of society originating in Western Europe and characterized by a relatively high development of productive activities based upon especially efficient arrangements for distribution and exchange, permitting not only a human but also a geographical division of labor. The present-day predominance—political, economic, and social—exercised by the areas of this industrial society over the less economically developed parts of the earth causes the régimes and movements of the less industrial areas to be in essentials variants or adaptations of the political types of the industrial nations. Certain special circumstances, in the nature of survivals from preindustrial conditions, (*e. g.*, the independent political position of the military leader where civil war places small demands upon the quartermasters' corps or the limited numerical extent of the politically effective population where illiteracy is still a widespread condition) often give a special color to the political activities of the less developed areas, but seldom in the present period effectively differentiate them from the politics of the industrial regions.

Confining ourselves in this way to the essential features of political movements we can recognize only four broad tendencies involving the question of régime, or basic political system, represented among existing governments or showing any likelihood of immediate political success. Three of these tendencies have been reasonably clearly recognized in contemporary thought for a longer period than the newer category of fascism.

The oldest of these modern political tendencies bears a superficial resemblance to fascism, is frequently vaguely confused with it, and in an uncritical sense fascism may be regarded as a reversion to this form. The traditional autocratic police system, characteristic of early modern states and particularly exemplified in such recent examples as the Russian Empire, the Kingdom of Prussia, and to some extent the second French Empire, is largely anomalous, though, especially as a tendency in upper-class circles, not extinct in the present century. Authority is ostensibly concentrated in an hereditary ruler, in a military aristocratic caste, or in a single military leader drawn from such a caste. Such a régime rules mainly through the repressive machinery of the governmental agencies themselves without the aid of the demagogic or mass mobilization devices of fascism. Since

the disappearance of the old Russian Empire, Japan has remained the only important example of this type of government, but even there the mechanisms of fascism are more and more frequently borrowed to provide adequate political support. In the less industrial areas of the world more or less typical régimes of this type still occasionally appear as well as more frequent perversions of liberal democratic forms in the traditional autocratic direction or fascistic tendencies strongly colored (and weakened) by upper-class leadership. The probability, fairly well established in spite of the apparent exception of Hungary (where, significantly, semi-fascist mechanisms were employed) that a traditional autocratic régime, once uprooted, cannot in the modern political environment be recreated, causes its remaining votaries, particularly the landlord-military "aristocrats" of Europe, to coalesce, somewhat unwillingly, with fascism and to serve as its Trojan Horse, affording it a technically legal entrance into office. Thus, the Herren-klub of Von Papen and Von Schleicher, like the Italian Nationalists and their King, realized that the repression of modern democratic tendencies was a task wholly beyond the power of the pitifully isolated political groupings which were all that they themselves could ever hope to command.

The second broad tendency of modern politics, liberal democracy, is exemplified in the governments of the United States, Great Britain, the British self-governing dominions, France, Switzerland, Belgium, the Netherlands, the Scandinavian countries, and the majority of the Latin American countries. The basic organizational feature of a liberal democratic system is a representative assembly elected by a substantial part of the population divided into several organized parties representing political subtendencies. This assembly exercises supreme legislative power, save sometimes for fundamental provisions embodied in a written constitution, and associated with it is an executive agency organized and limited by law and either responsible to the representative assembly or separately elected by the voters. In philosophy the liberal democratic tendency is characterized by that system of attitudes first extensively developed in connection with the English, American, and French revolutions and by the idea of ethical limits excluding the activity of the state from certain spheres of life, differently defined at different times and places.

The third political trend to be differentiated from fascism is that represented by the Soviet Union and the communist movement. Based upon the system of economic and social thought originally formulated by Karl Marx, imputing the predominant rôle in modern progressive political leadership to the industrial working class, aiming at the elimination of economic class distinctions, and demanding the elimination of the property relationships of capitalism, the communist movement is distinctly *sui generis* inasmuch as the other tendencies normally presume a continuance of some form of private capitalist enterprise.

Fascism as the fourth main tendency of contemporary politics, and the newest in point of development, requires consideration in three main aspects in the various national movements to which the term is applied. The economics of fascism, both with respect to the situations in which fascism has developed as well as to the policies which it undertakes to carry out, the mechanisms and practices which it employs, both as an oppositional movement and as a régime, in the acquiring and maintenance of political power, and the system of ideas by which it is held together and which it seeks to impose upon the nation which it rules—these principal aspects of fascism as seen in its leading national variations sufficiently show the essential unity of this political tendency and establish the propriety of the term fascism as a category of political classification.

While economic considerations with respect to the situation of countries in which fascism has become politically dominant or has become a prominent oppositional tendency are hardly diagnostic for our purpose, since they neither refer directly to the description of the movement itself nor is it possible to show that any exact correspondence of economic situations is reflected in an exact correspondence of development of the national fascist movements, these considerations, none the less, are highly significant in the explanation of other aspects of fascism. A certain basic similarity of economic conditions, moreover, has prevailed in all the countries where an indigenous fascism without significant foreign support has become an important political force.

Broadly speaking, we find that in Italy, Germany, and Japan previously existing governmental arrangements were to a considerable extent discredited by an inability to deal effectively with economic problems arising from a roughly

similar situation. In both Germany and Japan the situation can be seen to have been fundamentally related to an extreme concentration of control over capital in a very small section of the population. While the Italian situation seems in its broad aspect somewhat different in view of the widespread survival in the early 1920's of independent merchants and handicraftsmen, it should be noted that in the strictly industrial sphere, limited to a small area and directly affecting a relatively small part of the population but necessarily affecting indirectly the commercial (including the artisan) and the agricultural interests, a concentration of corporate ownership was well advanced and in agriculture also large-scale landlordism was the rule in wide sections of the countryside.

In Germany this concentration of control of capital and *de facto* monopoly situation (it was also *de jure* in Germany to an exceptionally high degree through the institution of the cartel) was especially reflected in a diversion of the children of the formerly self-employed families from commerce into the avenues of professional and technical training leading to a production of trained specialists far in excess of what the labor market could absorb. This declassed middle class (including those directly ejected from self-employment or from an "independent income" through the progress of monopolization in the inflation period as well as the second generation which sought to escape through education for the "superior" forms of employment) is well known to have been the part of the population most susceptible to Hitler's appeals. A self-respect predicated upon a definite emulative superiority over others which could no longer be maintained individually by one's economic attainments might still psychologically be based upon special symbolic membership in a mystic community by definition superior to other people.

In Japan the effects of monopoly, notoriously present from the very beginnings of the modern economic life of the nation, were particularly marked in the complete failure of that country to develop a national market to absorb its own industrial products. This situation was due in large measure to the monopolists' ability to keep to a minimum the wage-payments to the new and peasant-minded industrial working class. As in other instances, but in a specially marked degree, the effects of monopoly in holding down the distribution of income available for consumption purposes

in the form of wage-payments and small entrepreneurial withdrawals necessitated for the monopolists an expansion into foreign markets where relatively cheap goods could be sold. Since such markets are not likely to be freely opened for the sale of goods produced under conditions which local or controlling foreign producers cannot duplicate, effective disposal demands political control of foreign territories, the only means of determining the terms of importation of one's own exports. The demands of imperialism, therefore, combined with the requirement of preventing a change in the local income distribution produces among the monopolists a penchant for forms of government more certain to operate toward those ends regardless of popular tendencies of opposition than the institutions of the liberal democratic or of the "constitutional" form of the traditional autocratic state.

A consideration of the economic policies followed by fascism, being a descriptive procedure, comes definitely within the definatory and classificatory scope of this enquiry. The importance of the consideration of the economic situation of the fascist countries, however, here becomes immediately apparent because the policies adopted are those which logically follow from the economic situation out of which they arose. It might, indeed, from a more public viewpoint be said that the economic policies of fascism are such as will most effectively preserve and even accentuate the problems giving rise to those policies.

Since the primary problem from the business standpoint was the disposal in foreign markets of products which the home consumer could not purchase, the fascist governments have bent every effort to secure the reception of such goods in foreign markets under favorable conditions. This in the case of Japan took the crude form of allowing a staggering decline in the value of the national currency regardless of internal effects in order to facilitate foreign purchases of Japanese products. Germany, and to a less effective degree Italy, has taken advantage of a political hegemony over countries of Southeastern Europe together with an unfavorable bargaining position on the part of those countries to impose barter agreements whereby "surplus" national products are exchanged in return for raw materials valued highly in the internal economy of the importing nations. The more extreme aspects of this policy of securing foreign

markets on a favorable basis, involving war and conquest, need only be mentioned at this point.

The preservation of the foreign trade advantages already secured naturally necessitates a maintenance of the conditions making possible cheap home production, in other words, the restriction of consumable income distributed at home. This is the other main economic policy of fascism, reflected chiefly in the entire destruction of labor's bargaining power and the placing of wage-rates on a "take it or leave it" basis. While the Italian fascists have maintained the forms of labor unions, though on a wholly non-representative basis, the German fascists have made it a legal principle that the employer as "leader" in each shop fixes the legal rates of pay which may in no way be contested by his economic "followers", his employees. The Japanese fascists too have not lagged behind in taking measures to render innocuous or ineffective any labor organization and to leave intact the generally prevalent employer dictation of wage-rates.

Not merely wages are affected by the policy of cheapening home production costs. Entrepreneurial withdrawals by small merchants are also a "cost" from the standpoint of the monopolists and the high rate of bankruptcies under fascism in Italy suggests that this problem is also being taken care of. Whenever a chaotic economic situation, as during the Ethiopian war, makes imperative the fixing of prices by the government, the application of the greatest rigidity to the retail price destroys the small merchant's margin and hence his existence. It appears that this latter practice has been effectively applied in Germany also, including fixed sales prices on the products disposed of by small farmers. It would thus appear that the common economic policies of fascism have laid special emphasis upon the promotion of the foreign sale of merchandise which the domestic market cannot absorb and upon the further restriction of income consumed at home, thereby accentuating the deficiency of the home market which makes foreign selling imperative.

The second aspect of fascism requiring attention is the political mechanisms and practices employed to secure and to maintain power. Although a fascist movement in a certain sense exists as an autonomous organization of discontented population, its lack of the characteristics of an independent popular movement are made clear by its practical dependence upon the existing social hierarchy and even the formal

institutions of government. It is an interesting fact that no fascist revolution, as such, has ever succeeded. Not only have the terroristic activities of the fascist squads in all cases been made possible first by the supply of arms from government sources and second by the willingness of police and courts to ignore many crimes committed by fascists while punishing any retaliation or even self-defense on the part of their victims. Even with this aid fascism has always waited until the existing authorities transferred authority into its hands except in those cases, as in Spain, Austria, and Czechoslovakia, where the local fascist movement has served as a cloak for the official military intervention of a foreign fascist state. This is the meaning of the statement that both Mussolini and Hitler obtained power legally.

It remains doubtful whether the composition of a fascist movement is such that under circumstances where it was not afforded aid from established institutions and where its crimes were effectively punished it could maintain its existence as a persecuted and illegal group. The practice while in opposition has been to create the impression of invincibility through entirely unrestrained terrorism and sadism against any individuals regarded as hostile. The effects of such a campaign when highly systematized and free from police restraint demoralize the enemy. On the other hand, supporters are obtained largely through demagogic appeals, the nature of which will later be considered.

In the mechanisms which it employs for the maintenance of its power fascism demonstrates its greater strength as an instrument of political repression when compared with the traditional autocratic form of state. In addition to the pervasive police system fascism employs two special instruments for the prevention of opposition. The effectiveness of these two devices as well as the possession of a demagogic ideology which can be "sold" fairly effectively to a large part of the population explains why an autocracy of the traditional type like Japan tends to lean more and more upon the devices of fascism proper.

The first of the special devices of control is the fascist party itself, an organization of fanatical supporters drawn from the general population. Such a party is not to be thought of in any sense as an instrument for control of the state *by* members of the party, for fascist organization even within its own ranks is entirely authoritarian and hierarchical

and membership control is ineffective through such a mechanism. It is rather a means of control by the government over the population supplementary to the regular police and bureaucratic mechanism. In a sense the members of a fascist party in power are volunteer policemen and volunteer administrators who may be counted upon to work effectively in return for prestige, for a sense of authority, for a mystical sense of "community" in a special fellowship accomplishing a racial or national mission, or purely for the chance of opportunistic advancement; in any case without imposing a serious burden upon the governmental treasury. Naturally, certain perquisites are expected and received but sufficient material encouragement for a good many devoted party workers is less expensive than the complete maintenance of one trained full-time bureaucrat or policeman. The actual work accomplished may in many cases amount to espionage. If a certain proportion of party members can be kept in each place of work, each club, each school, each place where people come together in numbers, the régime will be spared the awkward task of placing a regular spy where something appears to be going on of which it has no exact knowledge.

Besides inexpensive policing the party membership also provides cheap administration through the practice of securing effective government control of all sorts of semi-private organizations by placing members of the party in their official positions. The most important application of this practice applies to the operation of the second special device possessed by fascist régimes, the official time-consuming organization. A special feature of fascist governmental practice is the requirement of popular enrollment in various organizations, which, whatever their ostensible purposes, produce the important result of keeping the population even in its leisure hours under the supervision of the members of the fascist party who serve as the officers of these groups. The principal examples of these time-consuming organizations are the German *Kraft durch Freude* and the Italian *Dopolavoro*, both designed to channelize the amusement of the industrial worker after working hours.

Besides these special devices, the fascist régimes concentrate upon a program of national expansion in which war is envisaged as the normal means. The necessity for this in terms of the economic policies of fascism has already been explained. As a device of internal politics it has the long-

recognized advantages of distracting attention from local grievances and also of affording a vicarious satisfaction to those who in imagination can substitute the bullying exploits of the leader and nation for their own humiliations. It should be noted especially that national expansion in fascist policy is clearly aggressive in *principle* and is not in any sense confined to linguistic and cultural *irredenta*, however much such aspects may be stressed for the purpose of disarming foreign suspicions. The *irredenta* concept may, indeed, be sometimes strained to cover acts of essentially foreign conquest as in the professed Japanese concern in its Manchurian conquest for what might be called the "Sudeten" Koreans, who so far had escaped from the benign principles of the Japanese imperial state. Likewise Hitler's justification of the subjection of Czechs as well as Germans to the Nazi imperial state rested upon the idea that according to the precedents of history Czechs should properly be subordinate to German power.

Another fascist practice, hardly peculiar to this movement but exemplified by it in a specially high degree, is the construction of artificial human scapegoats against which prevalent popular discontent can be harmlessly diverted. In all cases the organized political opponents of fascism are made to serve this purpose but a category more rigid and less liable to exhaustion through apparent or real inactivity and voluntary recantation is generally desired. Freemasons filled this rôle for early Italian fascism with limited efficacy, for the freemasons showed the undesirable tendency of disappearing as such. Neither were they, of course, clearly and obviously distinguishable from the surrounding population nor could the proposition "Once a freemason always a freemason" be effectively maintained. The Japanese fascist tendency to use "party politicians" as objects of ritual assassination is subject to the same limitation. It is not a category from which persons can readily be prevented from extricating themselves when conditions of persecution become severe.

Most suitable to the purpose among fascist political scapegoats is certainly the German category of the "Jew". Capable of being associated in propaganda with oppositionary tendencies, at the same time by definition in terms of heredity, it is deprived of the usual refuge from persecution in voluntary renunciation and assimilation. Thus it can be made

to serve as a permanent object for directed and channelized abuse.

Though the economic policies and peculiar political mechanisms and practices of fascism taken together probably afford an adequate basis for defining and distinguishing the movement, in the realm of ideas also fascism possesses distinctive characteristics. Indeed, the ideological system of fascism is one of its most powerful weapons of offense and defense. Except for overemphasis upon consciously rational deception, the subject might be covered with the statement that fascism is demagogy practiced upon the plane of a trained and highly skilled profession.

In maintaining a political position as unadapted to successful rational demonstration as that of fascism, conscious and planned deception alone would be a much duller weapon than the practice of eliminating possible standards of reference through an attack upon the basic assumptions of rationality itself. Particularly in the idea that what "nationally minded" persons feel disposed to do to their less patriotic compatriots needs no other justification than a reference to the superior "blood" of the perpetrators, but also as a trend in theoretical writings, subjectivism is highly cultivated in the various fascist movements.

Subjectivism is particularly efficacious in the concentration and unification of sentiment behind the fascist policy of national expansion. This fascist attitude, as has already been indicated, invariably takes an aggressive imperialist position. It should be sharply distinguished from mere nationalism such as we associate with the national freedom movements of 19th century Europe and which in its essential form we may recognize in present-day tendencies in Mexico, Turkey, and China. This older nationalism not only is compatible with liberal democracy and closely associated historically with it, but essentially rests its claims on a rational basis and assumes for the nations formed by other peoples a freedom commensurate with that which it claims for its own. Mazzini in his "Principles of Cosmopolitanism" expresses the nationalism of 19th century Italy:

The Pact of Humanity cannot be signed by individuals; but only by free and equal peoples, possessing a name, a banner, and the consciousness of a distinct individual existence. If you desire that the people should become such, you must speak to them of

country and Nationality, and impress in vivid characters upon the brow of each the sign of their existence and baptism as a Nation.¹

The rôle of the nation as a mere factor in the building of a better world could hardly be further removed from the fascist idea of the self-willed dominating tribe.

Racism as a means of providing a politically useful scapegoat has been sufficiently considered as a political device of fascism to make unnecessary any extended consideration of its specifically ideational aspects. Its connection with pseudo-scientific biological concepts is mainly an adventitious peculiarity of the German movement. As Kolnai has indicated in his *War Against the West*² its basic aspect even in Germany is quite removed from technical anthropology. In this form racism is a common aspect of fascist nationalism.

While the nationalist side of fascist ideology represents the more positive aspect of its demagogic function in the sense of diverting attention beyond the problems of the national scene itself, some recognition of the popular aspirations for reforms at home has also been necessary. Thus each fascist movement has on occasion stressed its radical and even socialist character through declarations of policy capable of interpretation in the direction of concrete egalitarian reforms directed against capitalism. The essential spuriousness of these pretensions has been repeatedly demonstrated not only by the ready financial support which fascist movements have secured from the wealthy but also by the consistent practice of fascist régimes in tolerating a small clique of monopolist owners even when national crises have forced economic sacrifices not only from the wage-earner but also from the small entrepreneur.

The combination of special features in the realm of economics, political mechanisms, and ideology clearly identify fascism as a single generally prevalent genus of political tendency. Incidentally to the definatory process these considerations also suffice to isolate fascism as the only political form through which reactionary, caste, and anti-popular tendencies effectively express themselves in the present-day political environment, in which the prevalence of mass literacy and political consciousness limits the effectiveness of mere backstairs intrigue by isolated cliques.

¹Quoted in Brown, Sidney M., "Mazzini and Dante" in *Political Science Quarterly*, XLII, March, 1927.

²New York, 1939, p. 36.

THE COMPOSITION OF THE POPULATION OF
LOUISIANA STATE PENITENTIARY,
1859, 1860, AND 1861

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Introduction. Crime is by definition a violation of law. As such it is a factor to be dealt with in societies of all times and places. This universal character of crime endows its diverse constituent elements and characteristics with a high degree of permanence. However, in no way is it contended that the "crime" complex is a closed system impervious to the dynamic processes of society and hence capable of transmission through the ages unchanged. An analysis of any phase of the general phenomenon of crime for any given period of the past may, on the one hand, yield important information bearing on our current crime situation and, on the other hand, clearly reflect dominant traits of the then existent social order.

Criminological research offers few problems more challenging than the query as to who is included in the criminal population. Is the criminal more likely to be black than white in color? Are females more law abiding than males? Is the urbanite scooped up more frequently in the net of justice than the rural dweller? Does the foreign-born population exhibit a greater proclivity toward criminality? Are the natives of a given community or state more law-abiding than migrants from other parts of the nation? These last questions concerning the composition of the criminal population involve such demographic factors as density of population and migration.

This study proposes to analyze the composition of the penal population of Louisiana just prior to the Civil War. The basic data are constituted by 646 individual records, one for every prisoner held in the state penitentiary at any time during the three years 1859, 1860, and 1861. These records contain such items of information as sex, color, slave status, parish from which the prisoner was sentenced, place of birth, term of imprisonment, and crime causing imprisonment. The Eighth Census of the United States (1860) provided the supplementary information utilized in computing measures of criminality.

Before proceeding the following limitations of the data should be noted: Not all criminals are placed in the

penitentiary. Therefore it is impossible to compute accurately from the penitentiary population the actual crime rate. However, the indexes resulting from these data are measures of criminality and they are comparable in every respect. Another weakness is the fact that local variations in judicial procedures may create a bias in the data favorable to some areas.

Sex Distribution. The female was subjected to penal confinement less frequently than the male, and the white female less frequently than the Negress of that period.

It is a matter of common knowledge that women are relatively immune to criminal prosecution. This might be due either to a laxity on the part of law enforcement agencies when dealing with members of the so-called weaker sex, or a natural or acquired bent toward lawfulness by women themselves. Whatever the cause Gillin reported that, if institutional commitments in 1910 for the United States are accepted as a basis, men are nine times more criminal than women.¹

This imbalance, which places women in an exceedingly favorable light, appears to indicate a somewhat improved position over the past for men when compared to the corresponding figures for Louisiana during 1859, 1860, and 1861. (See Figure 1.) Whereas only 52.3 per cent of the total population was male at this time, 96.4 per cent (or 623) of the penal population were men. In other words males reached the state penitentiary 28 times as frequently as females.

A racial breakdown reveals that even this apparent woman's advantage grossly exaggerates the criminality of the ante-bellum white female. Of the 493 white prisoners, 490, or 99.4 per cent, were males. Obviously, the situation among the Negro prisoners was the reverse. Only 133, or 86.9 per cent of the 153 Negroes were males. According to the relative number of commitments, then, the Negro female was committed to the penitentiary more than 20 times as frequently as the white female. Thus, in our data the female consistently evidences less criminality than the male, the female of the 60's less than the contemporary female, and the pre-Civil War white female less than the Negress of that period.

¹John Lewis Gillin, *Criminology and Penology*, New York, 1926, p. 36.

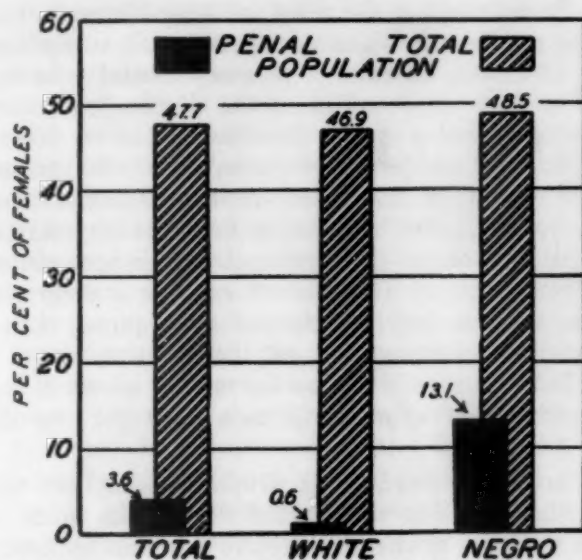


Figure 1. Per cent Louisiana Females Constituted of the Penal Population (1859, 1860, 1861) and of the Total Population (1860).

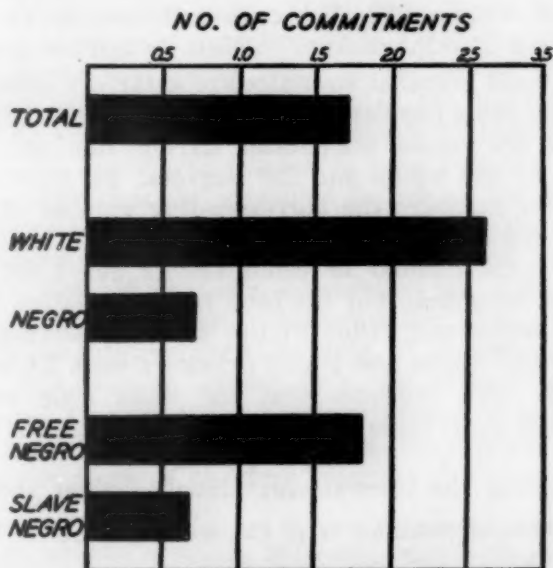


Figure 2. Number of Commitments by Race and Slave Status (1859, 1860, 1861) per 1,000 in Total Population of Louisiana, (1860).

Race: Punishment of the pre-Civil War Negro in Louisiana by prison confinement was rarely resorted to by the state.

Race has been imputed a primary causal rôle by many scholars in their explanation of the diverse cultures of the world, thereby giving rise to the school of racial determinism with its inferior and superior races.² With the ground thus broken, it was inevitable that the criminologist should hit upon the racial factor, embracing both the physical and the mental, as the cause for criminal differences among the races.³ More recently the idea of race as a determinant of crime has been largely supplanted by a purely cultural or environmental interpretation of the existing racial differentials. But whatever may be the actual cause, it is a fact that the extent of criminality does vary for the different races.

The presence of significant proportions of both the white and the black race in the United States has made possible thorough analyses of their respective criminal tendencies. All recent evidence places the Negro at a great relative disadvantage. In 1923 the Negro was found (according to commitments) to be 3.2 times more criminal than members of the white race. Although this ratio varied in different geographical divisions, the Negro, nevertheless, always had a larger number of commitments chalked up against him.⁴

These recent criminal statistics are a far cry from those depicting the penal population of Louisiana in 1859, 1860, and 1861. The 624 males imprisoned during this time were constituted by 490 whites and 132 Negroes. By dividing into each of these numbers the corresponding number of males resident in the state and multiplying by 1,000 a measure of criminality (the number of commitments per 1,000 population) was computed. For the total male population 1.7 per 1,000 was imprisoned. (See Figure 2.) The corresponding indexes for the whites and Negro prisoners were 2.6 and 0.7, respectively. This indicates that the white male was imprisoned well over three times as frequently as the Negro male.

On recalling the commitment statistics cited above for

²Cf. the works of Gobineau, H. S. Chamberlain, Vacher de Lapouge, and O. Ammon.

³See especially the works of the criminologists Lombroso and Aschaffenburg.

⁴Gillin, *Criminology and Penology*, pp. 46-47.

the Negroes and whites in 1923, it is immediately apparent that the data for the two periods are not strictly comparable in the sense of measuring criminality. This complete reversal of the relative positions of the two races in less than a century can hardly be attributed to an actual increase of such magnitude in the criminality of the Negro. Some other factor—one operative for only one of the given periods under investigation—must be isolated. That factor is slavery. During slavery the state would assume responsibility for inflicting punitive measures such as imprisonment on the slaves only in rare and serious instances. The owner or master was charged with maintaining order among his own slaves. Frank B. Sanborn briefly summarized the situation as follows: "The Slaves could become criminals in the eyes of the law only in exceptional cases. The punishment and trial of nearly all ordinary misdemeanors and crimes lay in the hands of the masters. Consequently so far as the state was concerned, there were no crimes of any consequence among the Negroes."

It is only to be expected under such circumstances that, if 96.0 per cent of the Negro males resident in the state were slaves, as was the case, the Negro will be shown in a relatively favorable light. It is clear from this that the use of the number of commitments as a measure of criminality, which at its best leaves much to be desired, is totally inadequate in this case. However, in the limited sphere of revealing the number of commitments without reference to criminality as such this index is very valuable.

The data thus far presented in this section convincingly demonstrate the rôle of slavery in retarding the commitment of Negroes to the penitentiary. Still more conclusive is another item of evidence concerning the status (slave or non-slave) of the Negro prisoners taken from the individual records constituting our basic data. A fraction of the Negro males in Louisiana (about four per cent) was free; also free was a fraction of the Negro prisoners. If our assumption as to the rôle of slavery is correct, the commitment rate to the penitentiary of the free Negroes should approach that

¹*Negro Crime Particularly in Georgia*, Report of a Social Study made under the direction of Atlanta University; together with the Proceedings of the Ninth Conference for the Study of the Negro Problems, held at Atlanta University, May 24, 1904. The Atlanta University Press, Atlanta, 1904, pp. 2-3. (Edited by W. E. B. DuBois.)

of whites, since they are not under the paternalistic hand of a master. This was precisely the case. (See Figure 2.) Of the free colored males, 1.8 were prisoners for every 1,000 in the total population, whereas among the slaves the corresponding rate was 0.7. The free Negro, then, was imprisoned over two and one-half times as frequently as the slave but slightly less than the white male. It seems obvious from this that the institution of slavery itself was largely responsible for this differential as well as that between the whites and the Negroes as a whole.

Nativity: In *ante-bellum* Louisiana the criminality rate of the foreign-born population greatly exceeded that of the native-born population; and within each of these two main categories significant variations in criminality were evident among the different nativity elements.

The birthplace or nativity of an individual is indicative of his general cultural background as well as the direction and extent of his migratory movements. Cultural background more than any other factor is responsible for the distinctive ways of thought and life characterizing our ethnic groups. And the direction and the distance of the migratory process operate as selective mechanisms to determine which age groups, which economic classes, and the members of which sex shall participate in the movement. Consequently either or both of these factors, migration and cultural background, may be causally related to the varying incidence of criminality among the different nativity groups within a given country.

First, how does the foreign-born compare with the native-born in the matter of criminality? Using the criterion of the relative numbers confined to penal institutions, the Census Report of 1910 reveals that for the entire United States, the foreign-born was twice as criminal as the native-born.⁶ Such a comparison is biased, however, unless qualified by the respective age, sex, and rural-urban compositions of the two groups under consideration. When standardized for these characteristics, the chances are great that the foreign-born may even be at a relative advantage.

During the years 1859, 1860, and 1861, in Louisiana, 509 free persons had some penal experience.⁷ Of these, 237, or 47 per cent, were born in the United States, whereas 272,

⁶Edwin H. Sutherland, *Criminology*, Philadelphia, 1924, pp. 97.

⁷This number (509) is exclusive of the 137 prisoners of slave status

or 53 per cent, were foreign born. Until these two numbers are related to the corresponding categories in the total population from which they were recruited, they are of small value. For every 1,000 free persons born in the United States and living in Louisiana in 1860, .82 had been confined to the penitentiary some time during the three-year period. The corresponding ratio for the foreign-born inhabitants of Louisiana at that time was 3.36, indicating a certain criminality among the foreign-born approximately four times greater than among the native born. As previously expressed, this measure of criminality for the foreign-born population is made fictitiously high by its peculiar age and sex composition, as well as its persistent concentration in urban centers. All of these factors, the influences of which it is impossible to eliminate in the given data, are conducive to comparatively high rates of criminality regardless of nativity. The fact remains, however, that relative to their respective numbers in the total population, the foreign born are confined to the penitentiary four times more frequently than the native whites.

On focusing our attention exclusively on the foreign-born elements in our present population, it is immediately apparent that foreign-born nationality groups do not all contribute equally to our penal population. From a census study, Gillin reported that "Measured by the commitments per 100,000 of white population born in a certain country, those born in Ireland, Mexico, and Scotland stand out preëminent." Sutherland, on the basis of another study rated the Mexicans first, the Irish second, and the Scotch third, in the number of commitments to prison.⁹

A similar situation regarding criminality among various nationality groups prevailed in Louisiana during the pre-Civil War years under discussion. (See Figure 3.) In absolute numbers of convicts, Ireland ranked first with 113, Germany second (47), France third (21), England fourth (20), and Italy fifth (19). However, there was a great numerical

but includes the 16 free colored prisoners. This particular classification of our data was necessary in order that they might correspond to the census information regarding the nativity of the general population of that period.

⁹*Op. cit.*, p. 61.

⁹Sutherland, *op. cit.*, pp. 99-100.

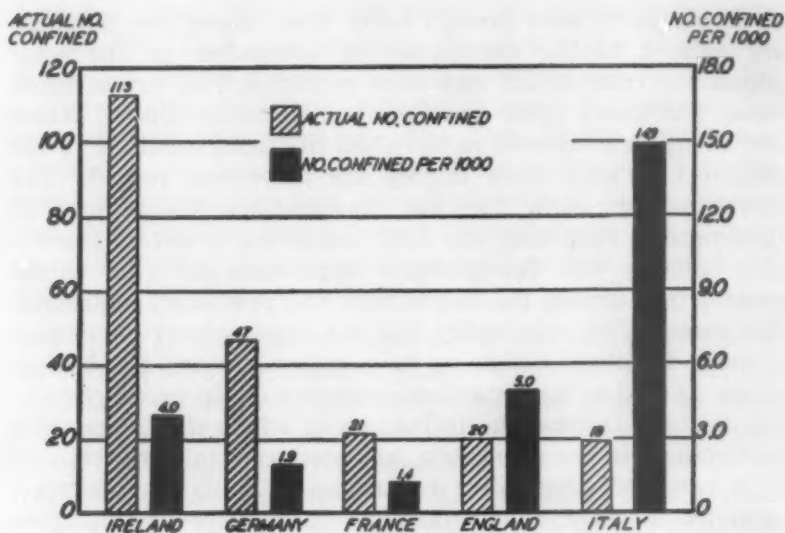


Figure 3. Actual Number of Persons Born in Selected Countries Committed to State Penitentiary and the Number Committed per 1,000 Born in each of these Selected Countries, (1859, 1860, and 1861).

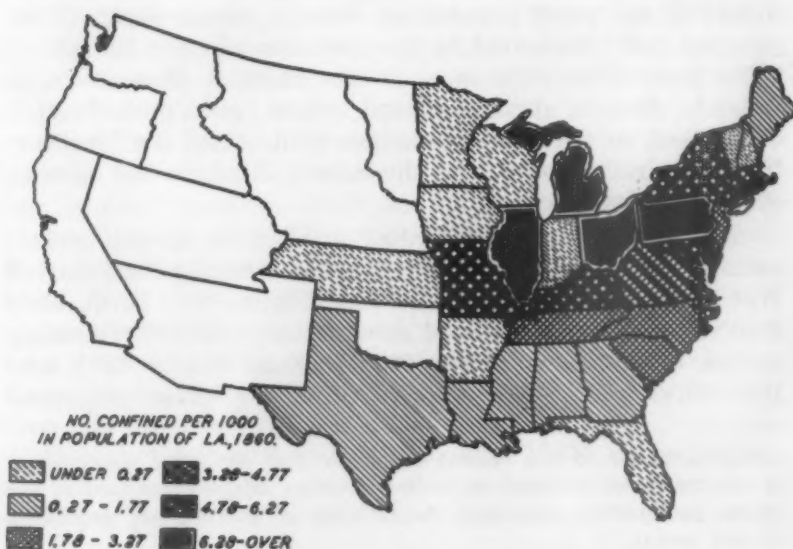


Figure 4. Commitment Rates According to State of Birth of Native-born Residents, During the Three-year Period, 1859, 1860, and 1861.

variation in the nationality groups from which these violators of the law could be recruited. Therefore, to be of maximum value, these actual figures had to be related to the corresponding numbers in the total population. This done, the rankings are quite different. Although Italy ranked fifth in absolute numbers, the fact that she had relatively few representatives in this country prior to the Civil War pushed her into the leadership. For every 1,000 Italian-born persons in this country in 1860, 14.9 had had some penal experience during the three-year period, 1859, 1860, and 1861. Following Italy was Scotland with a corresponding ratio of 11.4, Sweden, Belgium, and Mexico, in the order listed, ranked next, but their measures were based on such few cases that they carry little weight. England and Ireland, placing high from the standpoint of absolute numbers, dropped far down the line with confinement rates of 5.0 and 4.0, respectively. Germany and France, also high in actual numbers, were still lower with ratios of 1.9 and 1.4, respectively. Many of the less important countries of Europe with very sparse representation in the total population at that time either failed to produce a single state prisoner or produced an exceedingly small number of them.

Before leaving the general subject of nativity it will be well to comment briefly on commitment differentials among persons born in the various regions of the United States. Of the 237 free natives having penitentiary experience during the three years under consideration, only 62, or 27.2 per cent, were born in Louisiana. Southern states other than Louisiana were the birthplaces of 72, thereby comprising a total of 134 (56.5 per cent) prisoners born in the entire southern section. Of the remaining 103, 74 were born in the Northeast, 15 in the Midwest, and 14 in New England. Relative to the number of persons born in each of these sections and residing in Louisiana, how do these absolute numbers compare?

Generally speaking, it appears that distance to birthplace was somewhat correlated with frequency of penal experience. (See Figure 4.) Age, especially in case of Louisiana, should not be overlooked as a factor conducive to this situation. For every 1,000 persons resident in Louisiana in 1860 who were born there, .29 had some penal experience during 1859, 1860, and 1861. For every 1,000 persons residing in Louisiana in 1860 who were born somewhere in the South, .49 were confined to the penitentiary. The corresponding ratios for

those born in the Midwest, the Northeast, and New England, were 6.05, 6.44, and 4.79, respectively. New England represents a slight variation from the general rule, since it is situated at the furthestmost distance from Louisiana and does not exhibit the greatest regional criminality rate. However, its rate of 4.79 is relatively high. It is evident from Figure 4 that the states considered individually failed to demonstrate such a consistently regular pattern of criminal rates as did the regions taken as a whole.

Geographical Distribution: The penal commitment rate exhibited by the parishes of Louisiana in 1859, 1860, and 1861, apparently was closely related to such compositional factors of population as nativity, race, and residence.

Convincing evidence has been presented that significant commitment differentials existed between the male and female, the white and Negro, and the foreign and native-born of Louisiana prior to the Civil War. Also generally recognized is a discrepancy in criminal rates between the urban and rural dweller. It is natural, then, that the commitment rates of different sections of the state should vary in accordance with the sex ratio, racial makeup, nativity, and urbanity of their respective populations.

The 646 persons having some penal experience in Louisiana during the three-year period, 1859, 1860, and 1861, were drawn for the most part from parishes in the southeast portion of the state. (See Figure 5.) From this area Orleans parish alone sentenced over half (347) of the entire number. And approximately three-fourths (481) of all the prisoners are accounted for by combining this Orleans figure with the numbers sentenced from Jefferson (47), East Baton Rouge (29), St. Martin (21), St. Mary (21), and St. Landry (16), all south Louisiana parishes. Among the north Louisiana parishes, Caddo and Rapides sent the largest numbers to the penitentiary, 17 and 20, respectively.

These absolute numbers, however, are not just bases of comparison between different sections because of the large numerical variations among their respective populations, a few of the parishes stand out with especially high commitment rates. (See Figure 6.) Most conspicuous in this respect is the group of four parishes, St. Tammany, Orleans, St. Bernard, and Jefferson, clustered about the city of New Orleans. In each of these parishes over 2.25 males were imprisoned per

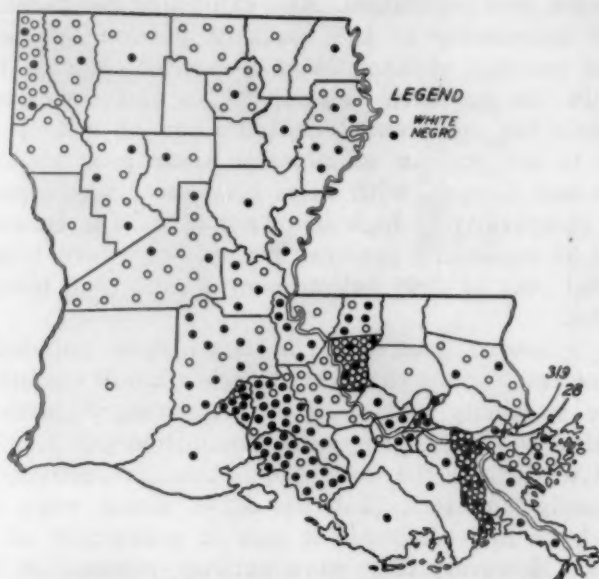


Figure 5. Distribution of the White and Negro Prisoners According to the Parish From Which They were Sentenced, 1859, 1860, and 1861.

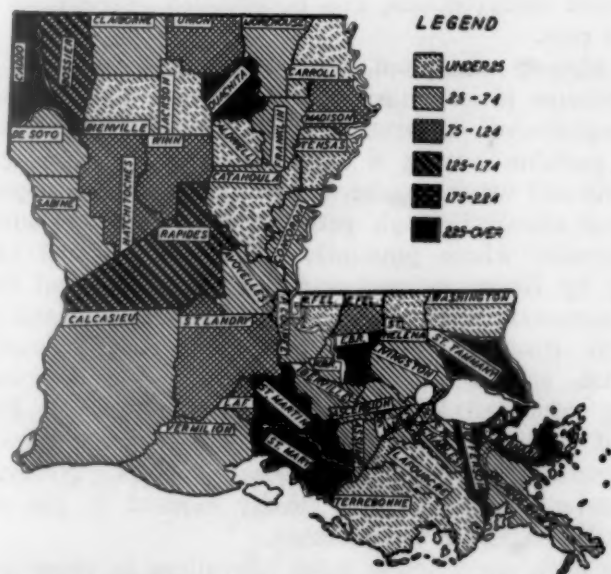


Figure 6. Number of Males Committed to State Penitentiary (1859, 1860, 1861) Per 1,000 Males Resident in Parish, (1860).

1,000 in the total population. Also exhibiting comparable high rates of criminality in the southern portion of the state, were the parishes of East Baton Rouge, St. Martin, and St. Mary. In the northern section, Caddo and Ouachita were responsible for the greatest contributions of male prisoners relative to the number of males in their total populations. Rapides and Bossier, with rates 1.41 and 1.33, respectively, ranked comparatively high in criminality. The commitment rates of 36 remaining parishes ranged downward from 1.25, the modal peak of distribution being located well toward the lower end.

The minimizing effect of a large slave population on the crime rate for the entire male population of the individual parishes is vividly illustrated by comparing Figures 7 and 8, showing the number of males committed per 1,000 males for the white and the slave population, respectively. It is immediately apparent that the slave males were characterized by a low commitment rate in practically all of the parishes. However, they were entirely responsible for the high rates exhibited in St. Martin and St. Mary parishes and partially responsible for the high rate present in Jefferson Parish. These few exceptions, very likely resulting from slave insurrections, are, nevertheless, exceptions to the general rule.

As already suggested, the cause for these wide parish discrepancies in commitment rates seems to lie chiefly in the compositional differences of their respective populations. Those parishes having a large proportion of foreign-born residents and urban dwellers, and a small Negro population, exhibited relatively high rates of criminality. Conversely, the parishes whose populations were constituted predominantly by Negro (slave) and native white rural dwellers made comparatively small contributions to the state penitentiary. However, these three factors, race, nativity, and residence, appear in numerous and diverse combinations, thereby immeasurably complicating the situation. Furthermore it is likely that their influence is conditioned and supplemented by other undisclosed factors. Nevertheless, their determinative rôle is clearly evident in the relative criminal rankings of the parishes.

The high commitment rates prevailing in those parishes clustered about New Orleans are excellent testimonials to our proposition. Consider first the parish of Orleans with

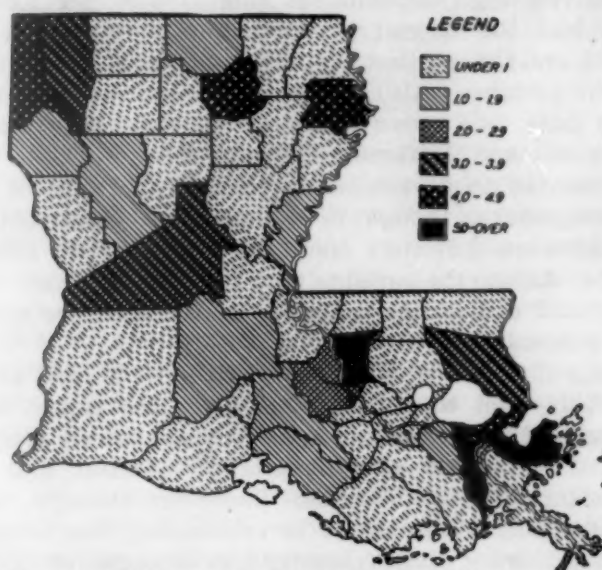


Figure 7. Number of White Males Committed to Penitentiary (1859, 1860, 1861) Per 1,000 White Males Resident in Parish, (1860).

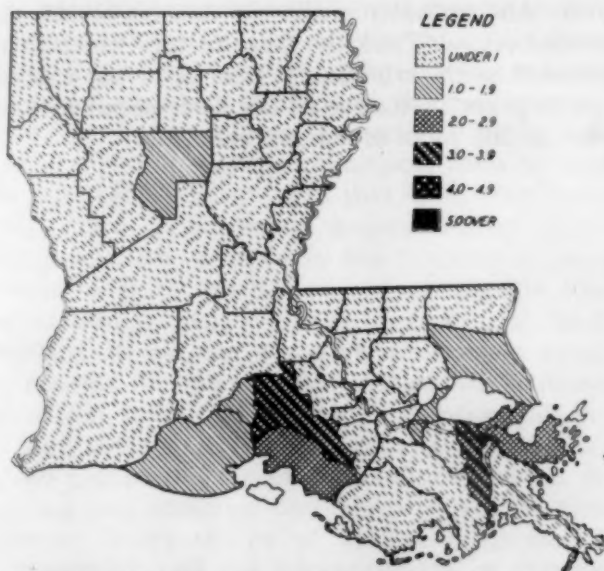


Figure 8. Number of Slave Males Committed to Penitentiary (1859, 1860, 1861) Per 1,000 Slave Males Resident in Parish, (1860).

the relatively high commitment rate of 3.83 per 1,000. In 1860 it had the largest proportion of foreign-born (41.5 per cent) and the smallest proportion of slaves (8.3 per cent) of all the parishes. Also within its boundaries was situated the only bona fide urban center of the state. St. Tammany, St. Bernard, and Jefferson, the remaining parishes of the cluster, tended to be similar in their proportions of slaves and foreign-born, though to a much less extreme degree. Also they were definitely encircled by the urban sphere of influence. Among the parishes with the very low rates, equally striking and convincing examples of the converse situation can be pointed out.

Finally it should be noted that race, nativity, and urbanity are probably not in and of themselves the causes of this wide range of commitment rates. They are merely frequently associated with and symptomatic of cultural and social conditions conducive to crime. Race, for example, seemed to be especially instrumental in criminality, not because of specific biological determinants, but because of its close relationship to the institution of slavery and social and economic stratification in general. Foreign nativity is indicative of low income groups and a culture disharmonious to our own. And urbanity ordinarily denotes slums, poverty, and organized crime. Thus, the three factors which this study has associated with criminality are valid as causes only insofar as they are indicative of the basic social and cultural phenomena at the roots of human behavior.

EQUALITY OF TREATMENT IN INTERNATIONAL TRADE AS A POLITICAL AND ECONOMIC POLICY

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Most-favored-nation treaties are major devices to guarantee equality of treatment in international commercial relations. In fact the terms "equality of treatment" and "most-favored-nation treatment," are often used interchangeably. There are two forms of most-favored-nation clauses found in commercial treaties, the conditional and unconditional. The former supposedly offers countries having such treaties as favorable treatment as any other country, in return for an "equivalent" concession, or without any concession if the concession to the first country was freely given. Since 1922 the United States has used the unconditional form in her commercial treaties, and the Reciprocity Trade Agreements Act of 1934 went even further by providing that concessions granted any one country shall be extended automatically to all nations except those discriminating against the commerce of the United States. Germany is the only country which does not receive these reductions. Nations enjoying unconditional most-favored-nation rights by treaty receive the benefits of any reductions immediately and without an "equivalent". The purpose of the most-favored-nation clause is to have no favored nation.

While the United States had stood almost alone prior to the World War in making conditional most-favored-nation treaties or interpreting others in that light, after the war and especially after 1929, many nations either adopted the conditional practice, or gave up the practice of generalizing concessions made to specific countries.¹ On the other hand the United States changed to the unconditional form and is now treating all nations which reciprocate on equal terms.

The reasons for the abandonment of unconditional most-favored-nation treatment by many countries of the world include high tariff barriers irreducible by treaties maintained by creditor nations and especially the United States, the desire to grant regional economic preferences which conflicted with the accepted interpretation of unconditional most-favored-nation treatment, and the incompatibility of this treatment

¹U. S. Tariff Commission, *Reciprocity and Commercial Treaties*, (Washington 1919), p. 18.

with bilateralism and the forms of trade control introduced during the depression.

It should be noted that these reasons do not constitute grounds for the abandonment of equality of treatment by the United States. The United States is a creditor nation on net account. Moreover, a liberal tariff policy on her part would be a partial answer to the first reason for abandonment by other countries. Since the United States apparently is not contemplating any regional agreements which conflict with the unconditional form, the second is hardly an objection. Even if she were to enter such regional agreements in the future it might be possible to gain consent from most-favored-nation countries, which she has done in some of the recent agreements concluded.² In regard to the third objection, since with few exceptions the United States has not resorted to these forms of trade control, it would be easy for her to fulfill most legal requirements of most-favored-nation treatment. Moreover, just as there is need for recognized exceptions to most-favored-nation treatment in case of regional agreements, so there is need for re-interpretation of the most-favored-nation clause to conform to conditions in a controlled economy. This also has been recognized in the recent agreements.³ Only when that controlled economy is used to direct trade into different channels and to effect bilateral balancing would it appear wholly incompatible with most-favored-nation treatment.

Although the reasons for abandonment of equality of treatment so far discussed do not generally apply to the United States, there are nevertheless additional arguments for such abandonment which may be and have been advanced. There are also special reasons for the retention of this policy by the United States. This paper will be devoted to an analysis of the arguments for and against equality of treatment, to an evaluation of the most-favored-nation clause in the light of the international economic position of the United States, and finally to the particular form of commercial bargaining which the United States has undertaken under the Trade Agreements Act.

²U. S. Department of State, Agreement with the Netherlands, *Press Releases*, (Mimeographed) Article XIII.

³U. S. Department of State, The Trade Agreement with the United Kingdom, *Press Releases*, Vol. XIX: No. 477, p. 103.

The negative side of the argument will be considered first. There are several arguments which have been made against generalization of concessions. In the first place, it has been argued that granting a favor to one nation as the result of a specific concession on the part of that nation, and then granting the same to other nations "gratuitously," constitutes undesirable generosity. It is possible, however, to grant concessions to a certain nation on commodities of which that nation supplies the United States a major part of its imports, which means that only a few concessions would be gratuitous. For example, it may be assumed that twenty-five per cent of the concessions are "gratuitous," and that seventy-five per cent are given as the result of direct concessions. Now a nation naturally takes into consideration all of the concessions given, against all of the concessions received, and not against all of those given to one particular country. That is, it considers the generalizing of the tariff to other nations which import twenty-five per cent of the commodities, and not only the reduction on the seventy-five per cent.

But are twenty-five per cent of the concessions really gratuitous? There are really valuable concessions gained from third countries as well as from the one specifically involved. Here it is necessary to consider the long run as well as the immediate favors. If many countries are pursuing bargaining policies it may be assumed that the incidental concessions eventually gained through generalizations will approximately balance the advantages given. In any case, as long as the barriers to trade are not prohibitive, a valuable gain will result whether or not a foreign nation pursues a bargaining policy. That gain will be an assurance of equality of treatment of American commerce abroad, or at least far greater assurance than could be hoped for from a policy of discrimination such as would result from strictly bilateral treaties.⁴

In the second place, it has been argued that the only way for the United States to bargain effectively with foreign countries is to resort to their own weapons. In other words, we should abandon generalization of tariffs and enter into exclusive agreements. The fact that twenty agreements have

⁴See Benjamin B. Wallace, "Tariff Bargaining", *Foreign Affairs*, XI (1933), p. 621.

been concluded is proof that some progress can be made without resorting to such tactics. On this point the former Chief of the Trade Agreements Division of the Department of State, Henry F. Grady, has expressed the opinion that even though there are one or two important countries whose arrangements with other countries have gone so far as to make impossible any agreement with the United States without embodying the principle of bilateral balancing, nevertheless, with most countries it is quite possible for us to make agreements embodying most-favored-nation treatment.⁸ Moreover, the very fact that the United States is now modifying her tariffs will, at least in some instances, help to eradicate these barriers and practices. As will be seen later, the United States would lose so much by a continuation of such practices that she should exert every effort toward their abolition.

A third negative argument is that generalization of reductions constitutes an impediment to lowering tariffs. In answer to this it should be noted that in the nineteenth century movement toward free trade, the most-favored-nation clause found general acceptance. It is true, however, as the Economic Committee of the League of Nations has pointed out, that the nineteenth century was a time of trade expansion and not of contraction, a time when the home market did not seem so important as in a period of economic depression.⁹ While most-favored-nation treatment has not generally been provided for in the various trade arrangements which have been entered into during the depression by foreign countries, it is by no means clear that most countries have benefited by the course which their commercial bargaining and arrangements have taken. It does seem fairly clear, however, that one of the reasons for the abandonment of most-favored-nation treatment was that it was not in harmony with the peculiar methods used to raise trade barriers, and not that it was incompatible with their reduction.

A fourth argument is that it is incompatible with tariff bargaining through reciprocal concessions. Several specific questions arise. What is the relationship, as far as the United States is concerned, between tariff reduction by bi-

⁸Henry F. Grady, "The New Trade Policy," *Foreign Affairs*, XIV (1936), p. 289.

⁹League of Nations, *Report of the Economic Committee to the Council on the Work of the 41st sess.*, C. 353. M. 165. 1934. II. B, 11, 12.

lateral agreements and most-favored-nation treatment? Can the United States afford to make an agreement with another country in which tariff rates are reduced, when she realizes that other nations, with a few exceptions, will share those reductions? Will nations be willing to make agreements with the United States when they realize that the concessions made by the United States are to be generalized to others? Will it be possible to bargain with those countries which have already shared in the reductions—in other words, will the United States still have concessions to offer?

SOME UNITED STATES IMPORT STATISTICS⁷

Country	Number of Articles from Chief Supply Country	*Imports From Chief Supply Countries (000's omitted)	*Total Dutiable Imports (000's omitted)	Ratio of Specialties to Total Dutiable Imports
1	10	21,538	26,889	80
2	5	5,169	5,640	91
3	18	12,074	23,504	51
4	3	2,156	4,230	48
5	69	36,073	48,385	76
6	28	15,453	23,366	66
7	12	83,102	84,382	98
8	5	11,744	22,377	52
9	3	2,333	2,828	83
10	64	31,998	55,907	57
11	155	62,693	84,093	74
12	3	8,922	9,750	91
13	10	33,171	35,688	93
14	1	1,307	2,303	57
15	37	27,391	46,934	58
16	48	21,150	31,909	61
17	13	7,514	11,138	67
18	1	287	521	51
19	26	13,641	22,016	62
20	4	610	1,266	48
21	5	11,335	12,879	89
22	11	4,010	4,068	98
23	5	3,132	6,354	49
24	1	47	52	90
25	19	8,068	10,139	70
26	11	3,440	5,934	58
27	19	12,066	20,487	59
28	97	37,872	66,113	52
29	44	1,435	2,305	62

*Dollar Value

⁷See Senate Finance Committee, *Hearings on Reciprocal Trade Agreements*, 73 Cong. 2 sess., p. 115; also U. S. Tariff Comm., *Tariff Bargaining Under the Most-Favored-Nation Clause*, (Washington, 1933), p. 9.

All of these questions may be answered in the affirmative. As we have seen, each country weighs all concessions given against all those received. Furthermore, these questions may be thus answered, because certain individual countries are each the source of supply for major portions of particular United States dutiable imports. In other words, it is made possible by a considerable degree of geographical specialization. As the following statistics show, each of twenty-nine countries exports to the United States on an average, about seventy per cent of the total United States imports of particular commodities or classes of commodities. About eighty-five per cent of our total imports come from these countries.

From these statistics we see that there is a considerable degree of specialization, and on this basis bargaining can be carried on. In no case does a single country of the twenty-nine import less than fifty per cent of the total imports of particular commodities or classes of commodities for which it is the leading source of supply. The average is much higher, around seventy per cent. By making reductions on the articles for which each country is the leading source of supply, there is no grave danger that imports will be greatly increased without a corresponding increase in exports. Moreover, after these concessions are made there are still concessions left which may be used in bargaining with other nations. The generalization of concessions likewise will mean that the main benefit will accrue to the country making immediate reciprocal concessions. Undoubtedly there are some commodities the sources of supply of which are so scattered that no such policy would be possible, but on which tariff reductions would be desirable. Duties on these might be lowered through reciprocal treaties even though no one country is the leading source of supply. Since the United States, because of her creditor position, needs to increase her imports over her increase of exports, this would be a splendid opportunity, rather than objectionable feature, and could be carried out under the Trade Agreements Program.

There is one feature in regard to this general procedure which still needs to be considered. Is the United States the leading source of supply of particular commodities for countries which are a leading source of supply of other commodities for the United States? Unless such is the case, it would not be possible to negotiate arrangements, since these countries would presumably be guided by the same principles as the

United States, as far as they maintained the most-favored-nation clause. That there exists a basis upon which bargaining may take place is evidenced by the fact that twenty trade agreements have already become effective. It is true that some of these countries no longer generalize their concessions, and therefore do not need to concern themselves with the most-favored-nation clause. But as far as they are so concerned they may effectively deal with the United States by making reductions on imports the principal sources of which are in the United States.

An examination of Canada's imports, for example, reveals that on a great many commodities the United States supplies one hundred per cent of her imports. On a great number the proportion is over fifty per cent.⁸ There are a great many specialties of the United States, such as raw cotton, automobiles, and certain petroleum products, which constitute a large percentage of the total imports of many countries. Adequate data on these points are lacking. United States foreign trade data contain only United States exports to certain countries. Moreover, the available import statistics of most foreign countries give only total imports. If the data were comparable it would be relatively easy to calculate the percentages. Such is not the case. Values have been differently determined, and in many cases quantities are given in units in United States statistics and in pounds in foreign statistics. But the most difficult factor of all is that the basis of classification is different for the various countries. With no attempt to make mathematical calculation, an examination of available data indicates that a considerable degree of specialization of the sort mentioned does exist. And according to the government agencies specially involved, bargaining on both sides has been carried on according to this principle.⁹

A fifth argument advanced against unconditional most-favored-nation treatment is that it inevitably leads to free

⁸See the *Canada Yearbook* (Ottawa, 1935), pp. 580-615.

⁹See British Board of Trade, *Foreign Trade and Commerce Accounts*, (London, 1935-36); U. S. Dept. of Commerce, *Commerce and Navigation*, 1934 (Washington, 1935), U. S. Dept. of State, *Press Releases*, Feb. 2, March 2, June 1, 1935.

trade.¹⁰ This objection is diametrically opposed to the one just discussed; that is, it prevents tariff reductions. Certainly this fifth objection has no historical basis. While unconditional most-favored-nation treatment was general in the free trade movement of the nineteenth century, it was also adhered to in the era of increasing protectionism of the latter part of this century and the first part of the twentieth. The unconditional most-favored-nation clause is a device for insuring equality of treatment and avoiding discrimination. It has generally been indifferent concerning the height of tariff rates, although nations have of late been averse to granting equality of treatment to nations with excessively high rates.

A sixth point offered as an objection to generalization of benefits is that it makes special arrangements impossible. The main answer to this objection is that the purpose of the clause is to prevent preferential treatment. At the same time there are certain recognized exceptions to either form of the clause, such as those between a country and its colonies, border preferences, and preferences between countries such as the United States and Cuba. If additional exceptions are desirable they may be realized within the framework of the clause, and do not necessitate its abandonment.

From a strictly economic point of view preferential agreements are seldom desirable. In the first place, What would be the effects of a reduction of duties on imports from only one country if that country could not supply the entire needs? There would be a loss of revenue with no benefit to consumers. Such a course would virtually constitute a subsidy to foreign producers from the treasury of the importing country. This is true because the price in the importing country would continue to be the world price, plus the full duty. The producer in the favored country would still receive the world price plus the full duty, if the full duty were remitted, or the world price plus the difference between the full duty and the preference if only a part of the full duty were remitted.

¹⁰ "Logically the universal acceptance of that form of interpretation of the clause most-favored-nation which would satisfy the 'unconditional' school would eventually lead, whether that be its object or not, to absolute free trade." Stanley K. Hornbeek, *The Most-Favored-Nation Clause in Commercial Treaties*, Bulletin of the University of Wisconsin, No. 363. Econ. and Pol. Science Series, Vol. 6, No. 2.

If, in the second place, all of the imports were supplied by the preferred country, at the world price, or as would be more likely, somewhere between the world price and the world price plus the full tariff, the effect in the importing country would be the same as it would be were the concessions freely generalized, provided that the supply were forthcoming at the world price; otherwise it would constitute a subsidy to foreign producers, if the price were higher. This second situation could result if the favored country furnished all the foreign supplies of this particular commodity to the importing country. In case the price were above the world price the marginal producers would not share in the increased gain, but the better situated producers would do so. Consumers would benefit to the extent of the price reduction, but the former producers of the preferred country would also receive a virtual subsidy from the treasury of the importing nation.

Thus far "objections" to the most-favored-nation clause have been examined and criticized. In most cases they either have not constituted real objections, have not been founded on fact, or have been overbalanced by other factors. There are several compelling reasons why the United States should make every effort to base her actions, as far as possible, on equality of treatment, and take the lead in the full restoration of the unconditional most-favored-nation clause.

In the first place, the unconditional most-favored-nation clause constitutes the nearest possible guarantee of equal treatment of American commerce. A policy of making concessions in favor of one nation is really discrimination against all other nations. Such a condition resulted in the past from the conditional clause, and if applied in the future this policy would lead to retaliation against American products abroad, and would promote international friction. Secondly, the absence of the unconditional most-favored-nation clause would lead to a diversion of trade from existing channels and presumably into less economical ones. Markets gained in one place would probably be lost elsewhere, and the world's resources would be less economically employed than at present. These effects have resulted from such practices abroad." In the third place, and closely connected with the second point, non-generalized bilateral reductions

¹¹For a full treatment of this point see Alonzo E. Taylor, *The New Deal and International Trade*, Chapter IX.

would tend to destroy the large volume of triangular trade. In the case of the United States as well as in that of most important trading nations, triangular trade constitutes a large proportion of the total trade, 21.4 per cent in 1929, 16.8 per cent in 1932, and 20 per cent in 1933.¹²

Triangular trade may be measured by the excess of exports over imports in our trade with certain areas, especially Europe, and from the excess of imports over exports with most of the Orient and Latin America. The trade balances, active and passive, which cancel each other, are a measure of triangular trade. If the United States were to increase her import trade from Europe by means of preferential agreements, a decrease of imports from Latin America would probably result, as would a diminution of Latin America's means of payment to Europe for her excess of imports from Europe and for the present imports from the United States. Since Europe could supply only at tremendous costs the commodities which the United States previously imported from Latin America, the unfavorable economic results of such a scheme are apparent. The more probable course would be an attempt on the part of the United States to increase her exports to Latin America, since most of her exports from that area now enter free or at low rates of duty, and since her trade with Latin America is heavily passive. Such a course would lead to a decrease of means of payment to the United States on the part of European countries, which they now derive in part from their excess of exports to Latin America. In the case of European countries which have attempted such schemes, the tendency has been not so much to decrease triangular trade as to decrease total trade.¹³

The fourth point is that a policy of strict reciprocity with its inevitable tendency toward bilateral balancing would endanger the balance of payments. It might appear that bilateral and triangular trade would account for one hundred per cent of foreign commercial intercourse. Such is not the case. An increasing proportion of payments for imports is being made by other means than exports, namely, by certain invisible items. The average balance of trade settled in this way was 12.4 per cent for the United States from 1910-1914, 4.1 per cent in 1926, 10 per cent in 1929, and 13.9 per cent

¹²League of Nations, *Review of World Trade*, 1933 (Geneva, 1934) p. 67.

¹³League of Nations, *Review of World Trade*, 1934 (Geneva, 1935), pp. 70-71.

in 1932.¹⁴ A policy of strict reciprocity would either make it increasingly necessary to provide for increased imports from each debtor country in order to make these payments, or else individual creditors would have to go without their means of payment. Also, invisible items have frequently been disregarded in making strict bilateral treaties.

Since the United States is a creditor in relation to many European nations, and at the same time has an active balance of trade with most of them, any policy of bilateral balancing would mean disastrous changes in trade trends. The active balance would need to become sufficiently passive to make payments on debts possible. Since the United States would probably not increase her imports sufficiently to achieve this end it could only be accompanied by a curtailment of exports or further defaults. Moreover, since the United States is a creditor nation and also maintains an active trade balance, she would be at a considerable bargaining disadvantage.

Mr. Sayre, Assistant Secretary of State, has summarized the United States policy in the following statement:

Equality of treatment to all must be the cornerstone of our commercial policy. It is foundationed upon justice and fairness, and therefore, it will be enduring. Without this, triangular trade cannot be expanded and developed. It constitutes the essential basis of our open door policy in the Far East. *It underlies our position toward European debtor countries in insisting that debt payments shall be free from preference or discrimination.* Upon it rests the established policy, now entrenched in a network of treaties, of "most-favored-nation" treatment.¹⁵

Lastly, the most-favored-nation policy is politically expedient. The United States should adjust her imports to her creditor status. To do this her imports must be increased. Therefore there is not any need of "Yankee trading"; she can be generous in her "concessions". Treaties made and then generalized should provide for a greater gain in imports than in exports. By making concessions to a particular country and then generalizing them the public in general will perhaps be unaware of the full "concessions" made. In

¹⁴See Arthur R. Upgren, "Triangular Trade", *Journal of Political Economy*, XIV (1935).

¹⁵Francis B. Sayre, "American Commercial Policy", Address before the American Association for the Advancement of Science, Pittsburgh, Dec. 31, 1934. U. S. Dept. of State (Washington, 1935), p. 11. (*Italics mine*).

view of the still general belief in the efficacy of high tariffs in the face of their disastrous consequences, this procedure appears justified.

EFFECTS OF TAXATION ON INDUSTRIAL AND COMMERCIAL DEVELOPMENT WITH SPECIAL REFERENCE TO THE SOUTH¹

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Data essential to a full exposition of the influence of taxation on industrial and commercial development are lacking. It is possible, however, on the basis of published statistics and of largely qualitative information, accumulated by the writer while Commissioner of Revenue of Kentucky, to indicate definitely some of the things that are *not* true and to formulate certain clear-cut hypotheses as to what actually is true. It is important in the first place, to examine carefully the place of taxation among the factors which condition economic development—and particularly plant location. Then it will be appropriate to turn to positive suggestions regarding the influence of tax policies on economic progress.

ALTERNATIVE TAX POLICIES NOT A PRIMARY INFLUENCE IN PLANT LOCATION

Frequently it has been suggested by chambers of commerce and by other propaganda agencies interested in location of industrial plants that a state is likely to wreck its future by the adoption of some particular tax plan. Possibly the most vigorous pleas of this sort have been leveled against income tax legislation. So much has been said along this line that several studies of industrial migration and rates of development have been prosecuted to verify or discredit the hypothesis.

Consider, then, the problems of industrial location and re-location. One of the most extensive studies of this subject was undertaken some years ago jointly by the Civic Development Committee of the National Electric Light Association and the Policy-Holders' Service Bureau of the Metropolitan Life Insurance Company. It was reported in a volume called *Industrial Development in the United States and Canada*. The general conclusion, so far as it relates to taxation factors influencing plant location, was that eleven other classes of considerations were on the whole more important. The more

¹Substance of an address before Conference on the International and Commercial development of Tennessee and the South.

urgent reasons in the case of the 16,000 firms studied were markets, labor, transportation, materials, availability of factory building, personal reasons, power and fuel, cheap rent, nearness to related industries, living conditions, and financial aid. Freedom from taxes, bonuses, free land, and free factory buildings were not even mentioned among the most important factors.

It may be argued that, notwithstanding the showing for industry generally, certain classes of industrial enterprises may be predominantly influenced by such considerations. The study shows, however, that this is not the case. The most usual classes of manufacturing—textiles, foods, lumbers, machinery, leathers, and chemicals—are separately considered. For each class, the eight most important industrial location influences as given by the manufacturers themselves are enumerated by rank; and taxation is not shown as one of the important considerations in a single instance.

But what of the situation in the southern states? Do tax factors bulk more heavily? It seems not, since, even when the reasons for locating in a particular community are studied for the south Atlantic and east south central states separately, tax factors do not appear at all in the list of the eight most important influences for either area. In the west south central states "taxes and living conditions" combined occupy eighth place. Since only the eight most important motives are shown by areas, it is not known whether in the south—aside from the southwest—taxation would rank above or below twelfth among the causes of industrial location.

Studying typical letters from the Southern manufacturers, which are quoted in the report, one is constrained to think the quality of governmental services—such as schools, fire protection, and policing—may exercise as much influence as the anticipated taxes on the particular plant or business. This conclusion, moreover, is borne out by experience in discussing tax problems with prospective relocated industries. One of the clothing manufacturers, for example, considered locating in Kentucky—and did relocate with us. He said quite frankly that he took a sacrifice in tax load in relocating in a particularly high-tax community; but he wanted the advantage of the public services supplied. Thus, he could profit from taking a loss on taxes in order to get the more significant gains of other sorts—including governmental services.

Other comprehensive studies have marshalled considerable evidence on this same subject, and the results confirm those reported in *Industrial Development* and already summarized. One by a committee studying the effect of personal property taxation in New Jersey undertook to rate the factors. In George A. Steiner's *The Tax System and Industrial Development*, it was concluded on the basis of a detailed study of the facts of nine states that "Shifts in industrial location . . . were caused by factors other than variations in tax burdens."

Two studies have been concerned essentially with the effects of income taxes—though in both cases other factors also were examined. One of these was reported by G. L. Lefler under the title *Wisconsin Industry and the Wisconsin Tax System*. In point of fact Mr. Lefler produces considerable evidence regarding other states as well as Wisconsin. A second analysis, published in January, 1931, under the title "Industrial Changes and Taxation Problems in the Southern States," dealt especially with our section. Figures presented tended to discredit the assumption that income taxes in general or in the southern states respectively had impeded manufacturing development.

In the light of all these facts and the common belief that taxation greatly affects economic activity, it is urgent that an explanation of the apparent paradox be sought. In the first place it is well to observe that none of our figures indicate that tax factors are always unimportant. Generally they disclose that tax considerations infrequently affect plant location in any significant degree. The evidence indicates, on the other hand, that in a relatively few cases tax problems do materially affect plant location or expansion policy.

In the second place, it is important to know that tax considerations, insofar as they condition the prosperity of an economic enterprise, usually do so because taxes normally constitute a cost of operating the business. Thus, they bulk among the various other cost factors, such as marketing, transportation, fuel, and power. Examination of *Statistics of Income*, published annually by the United States Treasury Department, will convince the skeptical that, although the amount of tax load is a material, even though comparatively minor cost factor, the difference in the amount as between one state and another is rarely as important as variations in other expenses—notably labor, power, transportation,

marketing, and rental costs.² Moreover, if taxes are higher that fact in itself *may* mean that insurance, watchman, and even rental expenses are lower. Certainly there is no nicely adjusted measuring stick which will give a commercial or industrial enterprise an exact answer to the relative assets and liabilities inherent in its relationships or prospective relationships to state and local government. Indeed, it is not in the least surprising after careful thought that tax differentials between one community and another should turn out to be relatively unimportant determinants of commercial and industrial location or expansion policy—save in a few unusual cases.

Although the conclusion is difficult, if not impossible, to prove, there is reason to believe tax policies affect commercial and industrial *prosperity* more than they do *location and expansion policies*. Certainly no careful student of economic institutions would contend that taxation is unimportant to enterprises which carry on our trade and fabricate our materials. It is worthwhile, then, to define those tax policies which facilitate and those which impede our economic activity. The remainder of this discussion, therefore, may well be devoted to a few propositions (postulates) which appear to state some of the most important conditions of economic health insofar as it is dependent on state and local tax policy.

TAX POLICIES CONDUCTIVE TO COMMERCIAL AND INDUSTRIAL PROGRESS

I. *The tax revenues must be expended in a manner which commands public respect for the effective management of the business of state and local government.*

Logically speaking the expenditures of public funds and the management of public business other than tax administration is outside the scope of this discussion. Notwithstanding this fact, it is important to emphasize that the total effect of the tax policy is determined in large part by the distribution of the proceeds collected. This is important to commercial and industrial development in many ways, two

²Professor Harold M. Groves (*Proceedings*, National Tax Conference, 1938, p. 558) points out that in Wisconsin where exceptionally good data are available, the ratio of state and local taxes to cost of manufacturing for two years studied in detail was but 1.65 per cent, though constituting 40.3 per cent of net income.

of which should perhaps be especially stressed.

In the first place the economic effect of taxation on business enterprise is determined essentially by the amount of services taxes buy. If a state and its political subdivisions collect somewhat higher taxes than do competitive states, the condition may be more rather than less favorable to commercial and industrial concerns if the service purchased for the benefit of taxpayers is greatly increased by virtue of more efficient operation of the state and local government. Putting the matter another way, business is entirely willing to pay taxes to provide reasonably for the public service, but it cannot afford to pay out funds which will be dissipated wastefully.

In the second place, and probably even more important than the economic considerations per se, are the factors included by tax administrators under the term "taxpayer morale." The objectionable character of taxes is tremendously enhanced by the consciousness on the part of taxpayers that public funds are not being economically employed. The situation is illustrated by experience involving one well-to-do industrial taxpayer. This man was one of the most vigorous and effective opponents of certain tax reforms in his community until the personnel of the government was so changed that he was convinced his tax dollar would purchase a dollar's worth of service. He then reversed his position. Although many industrialists are less frank about their views than this particular individual, his attitude is more or less characteristic of the outlook of business men generally. Consequently improvement in the whole area of financial management, including budgeting, accounting, treasury control, debt administration, and particularly purchasing, has a tendency to reduce the burdensomeness of taxation and to leave the impression on business men generally that their tax money is well spent.

II. Administration of tax laws must be efficient to prevent state-engendered unfair competition and to inspire the respect of the business community.

It is customary in tax discussions to emphasize factors which have to do with the ostensible distribution of the tax load. The questions most frequently raised concern the form of the tax, as for instance, whether the state utilizes property taxes, income taxes, general sales taxes, or excises on selected

commodities. Also popular discussion tends heavily to stress the tax rates. No careful student of taxation would gainsay the importance of these considerations. It seems true, however, that tax administration policy is likely to affect commercial and industrial development a good deal more pointedly than will the selection of the tax base or even the rate of levy imposed.

Tax administration policy is of overwhelming importance to economic development not only because it largely determines the attitude of business enterprise toward its tax liability, but also because it influences so directly the competitive conditions under which trade and industry must be conducted. One taxpayer in a community in which tax administration is lax must pay his entire property, income, or sales tax; another pays nominally; and a third omits to pay. Inefficient or discriminatory tax administration policy is thus conducive to an extraordinary type of unfair competition; such that the better the citizen, the more he pays. Consequently, it may be concluded that one fundamental condition of facilitating trade and industry by means of the tax system is to enforce the tax laws in such a manner that inefficiency of administration does not in any event result in improper discrimination between individual taxpayers.

III. *Erratic tax policy, or policy which depends on the good faith of individuals as distinguished from law are to be avoided.*

Closely akin to the administrative considerations briefly discussed already are those incident to legislative policies which give rise to taxpayer uncertainty and unrest. Indeed one phase of the erratic behavior of legislatures involves shifting administration from one official to another depending on the immediate political sympathies of each department head. This type of uneconomical legislation is extraordinarily devastating in its effect on taxpayer morale especially when the shift is extreme, as in the case of wholesale ripper legislation resulting from disagreement between the general assembly and the chief executive.

But the difficulty may depend heavily on the economic policy, or lack of policy, invoked by state legislatures. One illustration which has been found in particularly exaggerated form in certain of the southern states is the imposition of uniform general property tax rates applicable to intangible

as well as tangible property. In some instances there have developed gentlemen's understandings that accounts receivable will be assessed at a small fraction of the market value; but from time to time, as administrations changed, these arrangements have been impaired and sometimes entirely abandoned. The extreme uncertainty such conditions introduced for taxpayers generally and for industrial and commercial enterprises in particular cannot be too strongly condemned. Essentially the same may be said of the habit which has prevailed in a number of states of changing the complexion of tax legislation at every meeting of the general assembly. The inevitable consequences of such continual shifts in tax policy include impairment of the business man's plans for dealing with his tax problems and consequent interference with the normal course of business management itself.

IV. The state and local tax system must be sufficiently diversified to prevent oppression of any particular kind of business without necessitating so many taxes as to confuse citizens.

To state this proposition would appear to tax students to be mere reiteration of a truism. Nevertheless among the state governments of the United States several still depend almost entirely on property taxes for the support of the public services; still others have such tremendous variety of tax measures that taxpayers are overwhelmed with the confusion which ensues. It is therefore, in my opinion, not inappropriate to stress the necessity for a sufficient number of different taxes so that no one type of enterprise will be peculiarly victimized and so that there will be a sufficiently limited number of taxes to allow honest people, without undue difficulty, to keep account of their obligations.

V. Multiplication of exemptions from taxation invariably does more harm than good.

Every careful investigation of tax exemption has disclosed the conclusion that too many exceptions are already incorporated in our tax systems. Notwithstanding this finding, important pressure groups continue to seek tax immunity for themselves or their property or income. In too many instances, if the legislatures can constitutionally do so, they accept the proposals.

The spread of tax exemptions and other discriminatory limitations on the taxing power does not generally arise in

my judgment from a willingness on the part of the general assembly to be responsible for inequitable discriminatory legislation. It arises rather from the fact that the legislature fails to see the entire picture. The real problem is overlooked by maldistribution of emphasis on the part of the special interests directly affected. Those who seek special favors for owners of homesteads, for example, can make a very favorable plea based on the sanctity of the American home and on the desirability of avoiding tax loads for poverty stricken home owners. Sometimes the same legislature which is duped by this line of argument imposes new taxes that rest more heavily on that 50 or 75 per cent of the population unable to own any home at all. The entire problem presented by the proposal of a homestead exemption, leaving aside for the moment all considerations of administration which are by no means insignificant, includes the important question of whether or not the tax revenue lost by the relief sought can be replaced in *each* jurisdiction affected by alternative measures less burdensome than the normal property tax resting on the homestead.

Much the same line of argument would be involved in any other exemption proposal even though the fact that introduction of new exemptions, particularly from property taxes, almost invariably results in heavier taxation in the aggregate. At any rate one may state categorically that commercial and industrial development in the southern states appears to be definitely impeded by the prevalence of discriminatory tax exemptions as well as by erratic changes in exemption policy. Of all types of discrimination provided in this fashion, probably that which handicaps economic development most is the variety introduced specifically to favor particular classes of industrial development.

VI. *In selecting taxes other than the property tax it is important to have one or more progressive elements and to choose commodities and services for excise taxation with a view to influencing market conditions as little as possible.*

The tax systems of our several states were for many years vigorously criticized because they included no progressive element. That is to say, every tax imposed in many of the states required a higher rate of the relatively poor than of the well-to-do, or at best a merely proportional rate; thus those measures which directly discriminated against the poor were not offset at all in the state and local systems by measures of a compensating character. Professor Seligman, sensing

this anomaly, arrived at the conclusion from his study of income taxation just prior to the World War, that, although state governments did not need the revenue an income tax would yield, they should nevertheless impose such a measure replacing part of the property levy as a means of securing fairer distribution of the tax load. At the present time economic necessity for the policy Seligman recommended has been eliminated by the income tax policy of the federal government. Notwithstanding this fact, in order to secure the flavor of fairness and in order to introduce more effective progression as between the middle classes and the very poor, I think every state should levy some substantial progressive tax—probably two such taxes; one on inheritances or estates (which the federal estate tax misses in so far as the estates are relatively small), and a second on incomes. If income taxes are imposed, experience seems to indicate that rates should not be excessive and that, if state income taxes are designed to raise considerable revenue, the progressive element should be so introduced that the bulk of the tax would be paid by middle class income receivers.

VII. *If corporation taxes are employed they should be more refined than has often been the case, and they should avoid discrimination as between large and moderate-sized enterprises.*

Many of our state corporation taxes have in the past been imposed on almost completely arbitrary bases such as par or book value of issued stock, outstanding capital stock, or worse still, on some such a measure but not in any event exceeding a specified sum. Such policies except the last were perhaps justified at one time by reason of the inefficiency of state tax administration.

At the present time if a capital stock tax is to be imposed, it should certainly be determined by the actual net market value of the corporate stock rather than by par value, book value, or any other such crude measuring stick; otherwise economic enterprises will be interfered with by a small but harsh discriminatory element in the tax system that cannot be justified on any reasonable ground. The same general principle applies to other types of business taxes.

VIII. *Efforts should be made to avoid undue tax loads on trade to the advantage of industrial enterprise or vice versa.*

Some of our southern states have deliberately or unintention-

tionally geared their tax system to discriminate in favor of manufacturing as compared with commercial enterprise. In a few instances, the converse of this situation has obtained. Sound tax policy in my judgment necessitates an attitude of undeviating fairness toward different economic groups so that no allegation of "robbing Peter in order to pay Paul" can be sustained. Probably the most objectionable form of such discrimination is found in grants of exemption. But any practice deliberately or inadvertently calculated to favor one class of economic enterprise at the expense of another should be avoided.

CONCLUSION

In view of the fact that relative taxation policy obtaining in different communities is a condition of commercial and industrial development, the measurement of the influence of which is well nigh impossible, it may be suggested that revenue plans to afford the largest inducement to commercial and industrial progress are merely those assuring a fair tax system. The program designed for this purpose cannot be one which provides favors at the expense of transportation, agriculture, or professional groups but should be one deliberately calculated to afford a non-discriminatory distribution of the tax load between all economic interests in the state.

SPECIFIC LEGISLATION AFFECTING FARM TENURE WHICH SHOULD BE ENCOURAGED¹

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The wording of the topic suggests that we are now ready to get down to brass tacks and discuss specific legislation needed in farm tenure improvement. This is a subject to which we Texans have given considerable attention during the past year. As most of you know, of course, there was introduced in the Texas Legislature at its 1939 session a farm tenancy bill, most far reaching and comprehensive in character. Because this bill covers most of the major points of recently proposed tenancy legislation in the United States, this paper will be confined to a discussion of its brief but spectacular career. The aim of this discussion is to describe the bill; to examine the fundamental ideas back of it; and finally, to give you the writer's conclusions as to how the bill might be revised to meet certain objections.

Perhaps the best procedure is to give a brief chronological account of the bill's origin and career. In October, 1938, the Agricultural and Mechanical College of Texas was called upon by a member of the State House of Representatives for advice on the kinds of farm tenancy legislation needed in Texas. At the request of the president of the college, members of the college staff prepared a memorandum on the subject. This memorandum called attention to the need for educational work in the field and outlined some of the major problems with which farm tenancy legislation would have to deal. On the basis of this memorandum and with supplementary study, Mr. W. N. Corry, a member of the Agricultural Committee of the Texas House of Representatives, prepared a tentative draft of a farm tenancy bill. The bill was mimeographed and submitted to a number of farm leaders and representatives of State and Federal agricultural agencies for suggestions and criticism. Valuable contributions to the final draft of the bill were made by experts connected with the Texas Agricultural and Mechanical College and the United States Department of Agriculture.

The revised bill was introduced into the House in January, 1939, as H. R. 23. It was referred to the Agricultural

¹Presented at the annual meeting of Southwestern Agricultural Economists and Rural Sociologists, Texarkana, December 8, 1939.

Committee where it was given a public hearing. The bill then went to a sub-committee for further study and revision. In the meantime, the Attorney General's office ruled certain sections of the bill unconstitutional. (Lesson No. 1: Before a bill gets this far, be sure and get a favorable ruling from the Attorney General's office!) The revised bill which came out of the sub-committee, and which was finally approved by the Agricultural Committee of the House had few teeth in it. However, with the exception of two or three penalty or must clauses, the context of the bill remained much the same as when first submitted to the House. The bill came up before the House at a time when the Legislature was pre-occupied with the problem of social security taxes. For this and other reasons, members of the Legislature were not in a position to give the bill careful consideration. When the bill came up, the House refused to consider it by a vote of five to one.

Even though the Texas bill was defeated, its introduction, together with the attention that it received in the State, represents a significant step forward in land tenure reform in the United States. For the first time the people of Texas in large numbers became conscious of a new type of farm tenancy legislation. The bill was given much favorable publicity in the State by press and radio. Leading daily newspapers carried summaries of the bill along with favorable editorials. In addition to the news and radio publicity, the principles of such legislation were discussed in open forums with and by landowners and tenants in sixteen representative counties.

GENERAL DESCRIPTION OF THE BILL

The main objectives of the Texas Farm Tenancy Bill were: (1) To bring about longer and more secure tenures; (2) to encourage tenants and owners, through a system of compensation, to improve and maintain farm land and property; (3) to provide for a system of adjusting rents in an equitable and peaceful manner; and (4) to establish a system of arbitration for the settlement of disagreements between landowners and tenants. The provisions of the bill were similar to the provisions of the English Agricultural Holdings

Act of 1923, with which most of you are familiar.' The fact that the Texas bill is based upon the English law offers no grounds for opposing it. Many of our social institutions are rooted in English common law. For instance, Article I of the Texas Civil Statutes provides that:

"The common law of England, so far as it is not inconsistent with the constitution and laws of this State, shall together with such constitution and laws, be the rule of decision, and shall continue in force until altered or repealed by the Legislature."

This article means in effect that the common law of England which relates to farm tenancy controls, for the most part, landlord-tenant relations in Texas, because Texas has few written laws relating to farm tenancy. The same situation prevails in a number of other states. Since England has had for years a written law regulating landlord-tenant relations, the issue for Texas and of many other parts of the United States is not whether the English tenancy law shall prevail in this country, but *which* English law shall prevail—the present English Act or the old common law of England, which was superseded in that country over eighty years ago!

Now the writer will undertake, *in order to be specific*, to describe some of the outstanding provisions of the proposed Texas law; and to do this in relation to the four main objectives of the bill under consideration.

Objective One: To bring about longer and more secure tenures. The Texas bill provided that rental contracts were to be terminable only upon three months' notice before the end of each year. If no such notice should be given, the contract would be continued automatically for another year. The original draft of the Texas bill provided for six months' notice as compared with one year in the English act. Most Texas landowners and tenants prefer six months' notice. The importance of having a full year's notice lies in the fact that the tenant farmer might need to reorganize his

²Two years ago in a meeting similar to this, Dr. Karl Brandt, then of the University of Louisiana, read a paper on the English System of Regulating Landlord-tenant Relations. Copies of the English act have been circulated by the Division of Land Economics, Bureau of Agricultural Economics, U. S. Department of Agriculture; and an excellent monograph on "Compensation as a Means of Improving the Farm Tenancy System" by Marshall Harris, of the Division of Land Economics, is also available.

operations in case he were going to leave the following year.

The Texas bill provided also that when a tenancy was terminated, the party bringing about the termination should pay to the disturbed party compensation varying from one-fourth of one year's rent to one whole year's rent. The compensation, however, was not to be payable in cases of broken contracts, death, poor husbandry, insolvency, or land condemnation. In the English law only the landlord is liable for compensation for disturbance, and from one to two years' full rent is the amount of compensation payable. The compensation for disturbance clause was also designed to enforce certain other provisions of the law, such as the provision relating to the tenant's right to produce subsistence products and the arbitration provision. Strictly speaking, the English provision which exempts the tenant from the liability of paying compensation is the more logical and reasonable. It is more difficult for the tenant to find another farm than it is for the landowner to find another tenant; and then the tenant stands to lose in disposing of his operating capital.

Objective Two: To encourage tenants and owners, through a system of compensation, to maintain farm land and property. In order to carry out this objective, the Texas bill contained provisions: (1) Entitling the tenant to compensation for certain improvements, made at his own expense, if and when he left the farm; (2) entitling the tenant to receive compensation for increasing the value of the land through a system of farming superior to that practiced in the community or superior to that required by his written contract; (3) entitling the landowner to compensation for deterioration caused by the tenant's inferior farming; (4) entitling the landowner to additional rent for improvements put up at the tenant's request; (5) permitting the tenant to remove certain fixtures and improvements which he had put on the farm at his own expense.

Under the bill, tenants were not permitted to claim compensation for large, expensive, or permanent improvements put up without the landowner's consent. This class of improvements included such items as: the farm residence, barns, silos, permanent fences, terraces, drainage ditches, permanent pasture, reclamation of waste land, planting woodlots, adding household fixtures and equipment—such as electric lights, bathroom, wall paper, paint, running water,

and storage space. On the other hand, the tenant was allowed to make improvements of a temporary character without the landowner's consent. Such improvements included: establishing temporary pasture, preparing land for the following year's crop, application of fertilizer which would have a residual benefit to the land after the termination of the tenancy, and the making of such repairs to the farm dwelling as were needed to protect the health of a tenant and his family and to make it a habitable dwelling.

A *habitable dwelling* was defined as one in which a farm family can live in health, decency, and comfort, insofar as such items might be obtained by adequate floor space, an adequate number of windows and doors, insect-proof screens on windows and doors; facilities for the sanitary disposal of sewage and other waste; and the availability within a reasonable distance of a sanitary water supply.

The claims for compensation for increasing the value of the land through superior farming and for deterioration caused by negligence were to be determined upon the basis of careful inventories made at the beginning and ending of a tenancy. Disagreements with reference to evaluation of these items were to be settled by arbitration. Under the English law such evaluations are determined by governmental appraisers. This practice is justified on the grounds that the government is interested in seeing that land resources are protected and that the food supply of the country is insured. In order for such provisions to be effective in this country, it seems to me that some sort of governmental supervision would be necessary.

Objective Three: To provide for a system of adjusting rents in an equitable and peaceful manner. The Texas bill provided that rents could be adjusted by mutual agreement; but in cases of disagreement, the matter was to be settled by arbitration. If the landowner refused to arbitrate the question, he would be liable to pay the tenant compensation for disturbance. If the tenant refused to arbitrate the question, he would lose the right to receive compensation for disturbance. Thus both landowner and tenant had three alternatives: (1) To accept an adjustment in rents without protest; (2) to arbitrate the issue; and (3) in the landowner's case, to pay the tenant compensation for disturbance and get a new tenant; or in the tenant's case, to leave the farm and give up the right to receive compensation for disturbance.

It seems to me that this is one of the finest provisions of the proposed Texas bill. It has to do with the problem with which landowners and tenants have been struggling for a generation; namely, the determination of fair rents. Fair rents cannot, it is quite obvious, be determined either by any magic economic formula or by law. Only people who live in the community and know agricultural conditions firsthand are in a position to know what rents are fair and equitable on a given piece of land. True enough, a governmental agency might give them expert advice on certain agricultural and economic factors which must be taken into consideration; but the burden of the final decision ought to be left up to persons in the community who are familiar with the situation. Certainly this would seem to be the democratic way of settling the issue.

Objective Four: To establish a system of arbitration for the settlement of disagreements between landowners and tenants. The Texas bill provided that all disagreements involving evaluation of amounts of compensation due, or involving adjustments of rents, and violations of the rental contract, as well as all other disagreements growing out of the rental relationship, might be settled by arbitration. The first draft of the bill made arbitration compulsory, but this was considered unconstitutional; so the arbitration was made optional.

The unconstitutionality problem might be avoided, it seems to me, by setting up special courts to handle land tenure cases. Or the regular courts might well develop a type of investigation or procedure which would in effect amount to arbitration. It seems that most landowners and tenants would be more interested in settling disputes out of court by arbitration because of the lower costs involved. Without making any changes in our Constitution, arbitration might be made by law a prerequisite to bringing tenancy cases to the courts. If, under this system, the courts more or less invariably followed the recommendations of the arbitrators, fewer and fewer cases would be carried farther than arbitration; and even better, many cases would never reach the arbitration stage because most landowners and tenants would soon be able to predict what the results of arbitration and court action would be.

One other provision in the Texas bill with reference to arbitration is worthy of note. In case of disagreements

arbitrators were to be appointed by landlord and tenant, each party appointing one arbitrator, and the two thus appointed, appointing the third arbitrator. If either landowner or tenant refused to cooperate in the appointment of arbitrators, the county judge was empowered to appoint such arbitrators as the law required. This would have the effect of causing both landowners and tenants to be more prompt in appointing arbitrators. One reason why arbitration has not been used more frequently was suggested recently by one of our correspondents, a lawyer. He pointed out that most arbitration provisions in written rental contract were ineffective because they did not provide for the situation where one of the parties refused to appoint an arbitrator. This suggestion is well taken and confirms our opinion that the arbitration provision in the Texas law was a sound one; *i. e.*, the county judge was empowered to make appointments where either party refused or failed to appoint an arbitrator.

MAJOR ASSUMPTIONS AND PRINCIPLES UNDERLYING THE TEXAS BILL

The first assumption back of the Texas farm tenancy bill is that there are some tenancy problems which call for such legislation and that agriculture, including both landowners and tenants, will suffer unless something is done shortly. It is not the function of this paper to argue this point. Other participants on this program, as well as many other conferences of this character, have amply and fully demonstrated the existence of the tenancy problems which cannot be solved by private initiative.

A second assumption back of the Texas bill is that the public has an interest in the objectives of such legislation. If the public has an interest in conserving soil resources it has an interest in the development of a tenure system which will help in soil conservation. If the public has an interest in reducing tax burdens, it has an interest in making farm tenure more secure. A large part of the recent increase in Federal expenditures for social and farm security and for relief can be traced directly to the unstable and insecure economic status of landless rural families.

A third major assumption is based upon a simple, well recognized principle of psychology: the theory of rewards and penalties. It is the assumption that the best farming

will be done by those tenants who have been given a motive for managing and taking care of a farm just as though they owned it. This principle is expressed in the provisions of compensation for improvements, for superior farming, for deterioration, and for disturbance. The best way, of course, for a tenant to get this motive for taking care of a farm is through the ownership of his home and farm. The next best thing is for him to have the benefit of regulations which cause him to know, beyond a shadow of a doubt, that he will not lose the investments of time, money, and labor which he puts into improving the land and buildings on his rented farm. In normal human relations we do not expect people to perform services without hope of reward. We do not expect business men to deposit money in banks without any hope of ever getting it back. Then, why should we expect farm tenants to make deposits of their own time and labor in improving a rented farm without a guarantee that they will get back a residual when they leave the farm? Yet, frequently we find points of views like the following expressed:

"If a tenant is any good, he will take care of a farm and improve it without any written contract or law which guarantees him compensation for improvements."

"No landowner wants to get rid of a good tenant. The tenant, therefore, should not worry about being displaced as long as he does good farming."

The only answer to such points of view is that they are not in accord with the facts. Many cases have been found in surveys and have come to my attention in other ways in which tenant farmers have lost improvements placed on farms without assurance of compensation; and in which tenants highly valued, even by their landlords, have had to move through no fault of their own. Furthermore, even though many tenants may have long tenures, most of them, under the present system, never know absolutely that they will remain on the farm for more than one year at a time.

ADDITIONAL PROVISIONS RECOMMENDED

Such legislation as proposed in the Texas Farm Tenancy Bill could be strengthened and at the same time made more palatable by the addition of three provisions. In the first place, for such legislation to be understood and used by

landlords and tenants, a farm tenancy agency should be set up with educational, research, supervisory, and judicial functions. Putting a piece of legislation on the books, no matter how well drawn, will not accomplish the desired objectives without some encouragement, guidance, and enforcement machinery. This agency, however, should not be thought of primarily as an enforcement agency. Unfortunately, the popular mind thinks of legislation as being a means of forcing a minority to do or to cease doing certain acts. This idea accounts for the attitude of many landowners toward tenancy legislation. They feel that any proposed tenancy law is going to take away their rights or to reduce their already low incomes. It might be well to emphasize here that legislation has a deeper and broader function than that of beating minorities into line. Legislation, for one thing, in the field of farm tenure may be conceived of as a means of setting up a new social institution, or at least as a way of initiating a new and better way of doing things, *e. g.*, a more peaceful and profitable way of renting farm land. No one landowner can initiate such a system himself, because a few backward neighbors would prevent him from reaping the full benefits—the benefits which he would receive if all landowners were doing the same thing at the same time. The passing of a law, if it is one that is needed, may serve, therefore, as a means of getting all landowners and tenants together on certain basic farm tenure practices and starting them out at the same time.

A second provision, which would strengthen this type of legislation, would be to make the law applicable to only those tenant farmers who posted a bond to guarantee payment of obligations which might become payable to the landowner in cases of deterioration resulting from poor husbandry. This provision would protect landowners against financially irresponsible tenants and would meet the strongest objection raised by landowners against the proposed Texas legislation.

A third recommendation relates to the speed and manner of making farm tenancy legislation effective. Any far-reaching tenancy law should certainly not be made retroactive with regard to agreements already made at the time the law is passed. Further than this, the law should be applicable only to those farms that are acquired after the bill is passed.

Thus, no landowner could say that he did not know the conditions under which he could rent his land at the time he bought it. The net result of this provision would also make the introduction of a new tenancy system quite gradual and orderly. The slower process would permit the organization of needed educational and experimental work.

DATA FOR DEPENDENCY INDEX-MAKING

IRVING WEISSMAN

Social Planning Council of St. Louis

The spatial study of community life, which aims to localize and define so-called "natural areas" within the community, has been marked by an increasingly general use of the social index. This statistical tool is, according to Rice,¹ "a representative figure. It stands for some quantity, degree of activity, value, or situation, which cannot itself be expressed directly." It may be expressed as a ratio or percentage of some particular series of data distributed in either time or space, or of several related series similarly distributed, which are combined in a general index. Indexes have been constructed for a great variety of social phenomena,² including dependency.

Dependency indexes have been constructed on the basis of various definitions of dependency and of the statistical unit of count. While in the dictionary sense the problem of dependency is that of "inability to help or provide for one's self",³ there have been numerous rephrasings in sociological, social work and statistical literature. One version, which is perhaps the most common of all, follows Gillin in describing dependency as "pauperism", as "that condition of life in which one depends upon someone else than his natural or legal supporter for his subsistence either in whole or in part."⁴ A more sociological conception relates dependency to "the occurrences in which persons experience a failure to carry on the minimum standard of living which they regard as socially approved, if not defined, and which they, therefore, bring before the community's agency designed for dealing with such occurrences".⁵

Naturally, these variations in definitions of dependency have influenced choice of basic data. At least a score of

¹Stuart A. Rice, "The Historical-Statistical Approach to Social Studies," *Statistics in Social Studies*; Philadelphia: Univ. of Pennsylvania Press, 1930, p. 11.

²Stuart A. Queen, Walter B. Bodenhafer and Ernest B. Harper, *Social Organization and Disorganization*; New York: Thomas Y. Crowell Co., 1935, p. 57.

³Webster's *New International Dictionary*.

⁴John L. Gillin, *Poverty and Dependency*; New York: The Century Co., 1926, pp. 21-22.

⁵Philip Klein and Ruth Voris, *Some Basic Statistics in Social Work*; New York: Columbia University Press, 1933, p. 11.

different series of data have been so used. These may be classified in three types: those expressing the amount of money involved in dealing with dependency, those expressing the number of persons involved, and those expressing the frequency of occurrence of crisis situations associated with dependency or the volume of treatments.

Monetary series have been based on various kinds of financial data. Perhaps the earliest if not the most commonly available series of this kind consists of relief expenditures, such as monthly outlays for material relief. The financial statistics of municipal governments, published by the United States Bureau of the Census annually since 1909 (skipping the years 1914 to 1920) have provided figures of the total and per capita cost-payments for the operation and maintenance of charities, hospitals and correctional institutions. The Community Chest movement developed other monetary measures of dependency, such as the total receipts of chest agencies from all sources, and the amount or goal of the annual financial campaign which has been represented as the minimum need of the chest agencies as determined by demands made upon them the previous year and anticipated for the forthcoming year.

Another type of statistical series frequently used for constructing indexes of dependency has consisted of case counts of agencies dealing with dependency problems on a direct-service basis. Examples include figures of the total case load, which, by definition, is composed of all cases under care of the agency at a given time; the cases receiving relief; the active cases under care; the cases accepted for care; and the total applications received. These series have varied in inclusiveness, ranging all the way from the figures of one agency to all agencies dealing with one or more groups of needy, such as homeless men and women, dependent children, charity cases of hospitals, free dispensary cases, and families on public or private relief.

The third type of statistical unit used in dependency indexes has consisted of counts of the frequency of occurrence of certain crises associated with dependency or the volume of certain services rendered by community agencies for the poor. Illustrative of this type are the series on lodgings provided homeless men, small loans granted, evictions, foreclosures, consumption of free staples and free burials.

There is little need to point out that, though some of

these measures of dependency represent a practical approach to the statistical study of the problem, none is ideal. In general, they all tend to reflect, in varying degree, not so much the amount of dependency as agency standards, administrative practices, legislative provisions, the generosity of private giving, the wealth of agencies and the community, and the purchasing power of the dollar. A shortcoming more important from the standpoint of ecological use is that few of them lend themselves, in the present state of agency statistics, to aggregate unduplicated counts for groups of agencies or to segregate counts for small geographical units of the community.

It is this difficulty of obtaining fairly representative and inclusive data of dependency and distributing it geographically to determine the relative amount of dependency for different parts of the community, that has turned the attention of students to the Social Service Exchange as a source of dependency data. The Social Planning Council of St. Louis has been among the first to see this possibility. Since 1931, its Research Department has constructed an annual dependency index by census tracts on the basis of registrations filed with the Exchange by family relief and service agencies.

What recommended agency registration slips filed with the Exchange for use in constructing a dependency index was the obvious fact that they represent the experience of not one or a few agencies in the community, but practically all the important ones giving relief; and, furthermore, being centrally available, they could be assembled in unduplicated form and distributed geographically with comparative ease for any desired period. However, before use could be made of Exchange data it was necessary to establish their suitability for index-making purposes. Study of how the Exchange is used, how many relief-giving agencies use it, and the extent to which they use it, provided clear evidence of both the appropriateness and representativeness of the Exchange data for dependency index-making.

For the benefit of any who are unfamiliar with this office, the Social Service Exchange may be described as a facilitating agency for the community's agencies which deal directly with people in need. It assists them in determining their intake by supplying them with an index to available recorded information about the individual or family requesting assistance. This index has been built up over the years to

comprise the most comprehensive listing of its kind in the community by a clearing process on new applications which agencies follow voluntarily for the common good of the client, agency and community.

Scrutiny of the clearing policies of agencies using the Exchange in St. Louis attests to the suitability of Exchange data for use in a dependency index. Revealing some lapses and divergences, it nevertheless points to the common practice of clearing all applications involving persons who have not been assisted previously in any material way by the agency making the clearing. The clearing consists of two major steps. The first is considered an inquiry for information only and is not recorded by the Exchange. The second or "registration" is recorded as evidence that the agency intends to make a "case" of the application and plans to provide some service important enough for other agencies to know about, hence the registration. Registrations may therefore be regarded as reflecting the frequency with which community agencies have been required to deal with problems of dependency.

The comprehensiveness of the registrations filed with the Exchange is indicated by the number of community agencies for relief and family service which contribute to the registration figures, and the extent to which their registrations represent the actual volume of cases which are taken under care. Check of the agencies using the Exchange against the listing of relief and family service agencies in the Social Service Directory for St. Louis showed that all but one small private agency for transients and ex-prisoners registered their cases. The agencies using the Exchange included the large public agencies for general and categorical relief, and the private agencies for families and homeless persons under Catholic, Jewish, Protestant and non-sectarian auspices.

The extent to which these agencies registered with the Exchange was revealed by a comparison of registrations with cases taken under care in the same period. This comparison indicated that registrations represent roughly 82 per cent of the major part of the cases of need which come to light in the course of a given period by coming to the attention of community agencies designed to help the needy.

To convert the registrations into dependency rates, it is necessary to distribute them by census tract and relate them

to the population at large in each tract. The Research Department of the Social Planning Council has developed the following method of converting registration data into dependency rates: It has arranged for the Exchange to route to it in daily batches duplications of the original clearing slips filed by the agencies. Registration slips are sorted out from the other types of clearing slips, checked for address, arranged alphabetically by name of street, cleared with a street index guide for census tract location, which is color-pencilled on the slip. The slips are then re-arranged alphabetically according to family name and kept on file in that order until the close of the year, when they are run through for duplications, which are removed so that the family may be counted only once in the year's total. In the case of duplicated slips which show a change of address, the address on the slip of last date is used in the distribution.

The registrations from each tract are then added together and divided by the total number of families living in the tract, according to latest available figures, which are of the 1930 federal census. The family, rather than the individual, population is used as a base for rate-making for two reasons: first, because social service agencies focus their attention upon family units, even when treating individuals, and it is therefore believed that a family ratio would have greater significance; and secondly, because it is believed that the family population changes at a more conservative rate than the individual population and thus provides a more dependable base for computing population rates for data of later date than that of the population census. Rates are expressed per 10,000 families.

As an aid in comparing the relative position of tracts in respect to dependency, the 128 tracts comprising the City of St. Louis are ranked in the order of their ratio of dependency (high to low). To facilitate comparison further, this array of tracts is divided into eight equal groupings of sixteen consecutively ranking tracts each. The tracts in each group are given the respective octile rank of the group into which they fall, which ranges, of course, from one to eight. The results of this analysis are presented in tables and spot and rate maps, the latter colored from dark to light shades in the order of their rank.

Computing the ratio of relief registrations to families resident in a tract from Social Service Exchange data

furnishes a dependency index which, though crude, is nevertheless a useful working tool for the sociologist and the social worker. The Exchange rates of dependency show in St. Louis rather high correlations with other indexes of social disorganization.^a It would seem, therefore, that they may be accepted as at least approximate measures of relative economic status and the degree of dependency.

^aRalph Carr Fletcher, Harry L. Hornback, Stuart A. Queen, *Social Statistics of St. Louis by Census Tracts*; St. Louis: Washington University, 1935.

NOTES FROM THE SOUTHWEST

The twenty-first annual meeting of the Southwestern Social Science Association will be held in Dallas, Texas, Friday and Saturday, March 22 and 23. Headquarters will be in the Baker Hotel.

ARKANSAS

University of Arkansas—The College of Business Administration is organizing and conducting the following business executives' conferences for the coming summer: August 5-9, Property Insurance Agencies School; August 12-16, Southwest Graduate School for Savings and Loan Executives, Second Session; August 19-23, Third Annual Arkansas Bankers Seminar.

John W. White, formerly cooperative research supervisor at the College of Agriculture's Cotton Branch Station, has been appointed an instructor in the Department of Rural Economics and Sociology.

Otis T. Osgood, formerly cooperative research supervisor at the College of Agriculture's Livestock and Forestry Branch Station, has been appointed research assistant in marketing in the Department of Rural Economics and Sociology.

The Department of Rural Economics and Sociology has received a grant of \$12,300 from the General Education Board to be used to finance a 5-year study of marketing and transportation of Arkansas farm products. The work will be conducted by C. O. Brannen and Trimble R. Hedges.

Dr. W. T. Metzler, Assistant Professor of Rural Economics and Sociology, will participate in a conference on Problems and Programs of Research in Agricultural Labor at Berkeley, California, March 18-20. This conference is sponsored by the Pacific Coast Regional Committee of the Social Science Research Council.

J. G. McNeely, formerly instructor in the Department of Rural Economics and Sociology, but now with the Bureau of Agricultural Economics, is co-author of "Land Tenure in Arkansas", Bulletin No. 384 of the Arkansas Agricultural Experiment Station. J. A. Baker, of the Bureau of Agricultural Economics, is the other co-author.

Dr. D. Y. Thomas, Chairman of the Department of History and Political Science, will teach in the summer session at the University of Texas.

LOUISIANA

Louisiana Polytechnic Institute—Dr. J. O. Van Hook has resigned as Head of the History Department, Mississippi Woman's College, Hattiesburg, Miss., to become Assistant Professor of History, Louisiana Polytechnic Institute, Ruston, Louisiana.

Mr. Louis O'Quinn (M. A. University of Texas) has been appointed Assistant Professor of Economics, Louisiana Polytechnic Institute, Ruston, Louisiana. Mr. O'Quinn and Dr. Van Hook assumed their new duties with the opening of the fall semester at Tech, September 11.

Associate Professor George E. Pankey, Louisiana Polytechnic Institute studied at the University of North Carolina the past summer.

Assistant Professor Robert W. Mondy has resumed his duties at Louisiana Polytechnic Institute after a year's leave which he spent studying at the University of Texas.

Louisiana State Teachers College—William Culp is a new member of the geography staff, Louisiana State Teachers College, Natchitoches.

OKLAHOMA

Central State College—Professor Edward E. Keso, Central State College, Edmond, Oklahoma, has been elected Chairman of the Oklahoma Geographical Society for 1940.

Southeastern State College—John W. Morris, formerly of Seminole Junior College, is now Professor of Geography at Southeastern State College, Durant, Oklahoma.

TEXAS

Southern Methodist University—Dr. Alan D. Ritter began his work at Southern Methodist University this autumn as instructor in economics. He holds the B. A. degree from DePauw University and the Ph. D. from the University of Wisconsin.

A. Q. Sartain, Assistant Professor of Psychology at Southern Methodist University, was granted the Ph. D. degree by the University of Chicago in June this year. The subject of his dissertation was "The Conception of the True Path and Efficiency in Maze Learning."

The Southwestern Philosophical Conference met at Dallas College of Southern Methodist University in the Y. M. C. A. Activities Building, December 27-29.

Dr. Arthur A. Smith, of the department of Economics at Southern Methodist University, gave an informative talk on "What the Laborer Wants" before the Dallas Personnel Association on Tuesday evening, December 12th. Both personnel men and business executives enjoyed Dr. Smith's analysis and point of view.

Dr. J. U. Yarborough, Professor of Psychology at Southern Methodist University, read a paper recently at the annual meeting of the New York Educational Conference. His paper dealt with the Texas program on Educational Guidance.

Stephen F. Austin State Teachers College—Dr. F. W. Reid, formerly of the University of Arkansas, is now Associate Professor of Geography at Stephen F. Austin State Teachers College, Nacogdoches, Texas. He takes the place of Dr. C. B. Odell who is now at the University of Missouri.

The University of Texas—Plans are rapidly being completed for the Latin-American Institute to be held at the University during the first six weeks of the Summer Session, 1940.

BOOK REVIEWS

EDITED BY O. DOUGLAS WEEKS

The University of Texas

Powdermaker, Hortense, *After Freedom; A Cultural Study of The Deep South*. (New York: The Viking Press, 1939. pp. 408.)

Miss Powdermaker has written a book on Negro life in Indianola, Mississippi. The author says "Prediction is not the purpose of this study, which has attempted to present the portrait of a functioning community." (P. 332) This reviewer believes the portrait is correctly drawn in spots, poorly sketched in as many other places. In so many places, though Miss Powdermaker tries to present facts in an unbiased way, her short stay in "Cottonville"—Indianola—makes it impossible for her to see the facts—so believes the reviewer. Dollard's *Caste and Class in A Southern Town* was written on the same subject, in the same setting. Miss Powdermaker shows superior scholarship. Rather than clouding her attempts with a scrambled set of debatable concepts, she carefully states her "limitations" and those of her data (x-xiii) and then goes directly to her tasks of analyzing intricate patterns of status and role. Dollard's study belongs to the tradition of voyageur journalism from which the South has so long suffered.

While Miss Powdermaker does point to some significant facts, many of which would be overlooked by an investigator with real Southern background and experience (suffer the thought: Miss Powdermaker is a "southerner"—from Baltimore!), the fact remains that over and over she makes the statement that Negroes in and about Indianola live in constant dread of being lynched. Most of the Negroes in that community live a lifetime without ever a thought of a lynching. Again: sometimes, it is true, a Negro fails to get justice in the white man's court. Miss Powdermaker says "No Negro can expect to find justice by due process of law" (p. 126; see also pages 88; 174). As a matter of fact, sometimes a white man might not get justice in court. Negroes are cheated in this community, Miss Powdermaker says! All would condemn the slightest cheating of Negroes; but where aren't people cheated and what section of the country has any kind of "corner" on rascals who will cheat anyone who happens to come within their reach? Cheating Negroes is not so general a practice as Miss Powdermaker's story would have one believe.

No southerner would be "taken in" as Miss Powdermaker has been in many of her interviews—the method used by her in securing personal and family case histories. The author seemingly does not know how the average Indianola, Mississippi, Negro will answer questions pertaining to his own thoughts and those of his race (having once decided that there is no incrimination for himself, or his Negro associates) precisely as he thinks his interrogator wants them answered. Doubtless many Indianola Negroes—with their usual sense of humor—enjoyed "stringing" the "Northern white lady" who was "prying into their business."

There is no need to pounce upon more of Miss Powdermaker's statements which seem to me to be off-key. The important thing is that we must have more studies, each a sober, sincere effort to advance our

knowledge. As Justice Frankfurter says in his preface in *One Thousand Juvenile Delinquents* (Glueck, S. S. and E. T., Harvard Uni. Press, 1934; ix): "At long last the conviction grows . . . that we must understand before we can remedy. Equally we begin to realize that understanding cannot be left to the instinctive ignorances of 'common sense' but must here as elsewhere have resort to the hard-won conquests of disciplined and persistent inquiry."

After finishing the book, I noticed the back carries that old dodge that Southerners do not understand their Negroes. Bosh! The effective element here is trained workers, and the South, to date, has had too few specialists in sociological inquiry; too many "sociologists" who have failed to comprehend Frankfurter's wisdom. But the day is changing, and while *After Freedom* underscores the lack of indigenous social science research in Mississippi, I believe that the real contribution in the near future on such problems must come largely from our local social scientists who, living in the system—if it is that—may over a period of time develop an inspection which will be more fundamental and systematic, less sporadic and bizarre.

A. B. BUTTS

University of Mississippi

Gras, N. S. B., *Business and Capitalism*. (New York: F. S. Crofts & Co., 1939, pp. xxii, 408.)

"*Business and Capitalism, an Introduction to Business History*," is an offering by Professor N. S. B. Gras, the Straus Professor of Business History in Harvard University, and undoubtedly America's most eminent authority in the field. He here attempts to trace the development of capitalistic enterprise through six principal stages, those of pre-business capitalism, petty capitalism, mercantile capitalism, industrial capitalism, financial capitalism, and national capitalism. The story is carried from the days of the dominance of status up through an analysis of the American New Deal.

Characteristics of the book include the following points: (1) from various signs of its internal organization, it would seem to be founded upon Professor Gras' lectures in the Harvard Post-Graduate School of Business Administration; (2) it represents a definite defense of the place and pride of the business man in the economic order; (3) it is thought-provoking and indeed will conduce to a critical approach on the part of many readers through its straightforward assumption that first place in society belongs to the business man. As a matter of fact, there is a certain similarity between the point of view of Professor Gras in his consideration of the business man in the world's economic history and the Physiocratic attitude toward the agriculturalist.

Throughout the volume, Professor Gras insists firmly that private business capitalism has advanced society and humanism. He makes it quite evident that he does not particularly appreciate the reformers who, to paraphrase his presentation, are without the capacity to build or main-

tain the economic order, but, nevertheless consistently level volleys against the business man.

Professor Gras holds that there is a threefold classification of business men which he presents as follows: (1) the playboys of business who give business a bad reputation and make reforms necessary; (2) the misfits among executives who make sundry unpromising experiments in their business and logically end by impairing the financial position of the very business they should nourish and cherish; and (3) of course those subject to admiration, those who love business administration, "who are not good administrators because they seek profits but earn profits because they are good administrators; their business is their masterpiece", and society will profit from it.

The hero concept of Carlisle is applied to individual merchants in an individual-studded picture of the materialistic development of society. "A race of competitors arose in business the like of whom the world has never known before. Cornelius Vanderbilt illustrates the type in rail-roading. No man and no government could hold him back. He would not sue an opponent, he would wreck him through competition. He knew that his services were more important for society than the private selfish purposes of rival business men or venal politicians. Andrew Carnegie could make steel rails more cheaply than competitors could and enjoyed wrecking those competitors. Rockefeller would allow no corner stand or store to hold up his network of Standard Oil. He knew that he had something worthwhile. Petty dealers were flies to be swatted as he made his way to victory for himself and service to society. Make the most out of these ye moralists and devotees of social ethics! The method bothers me as it does you, but I also think of the results and the advantages of rapid results." It may be observed that the methods do not seem to bother Professor Gras a great deal. Apparently the Gras point of view is that expediency and a general pragmatic attitude should rule in the relationship of business men to society and government. "If the laws were equitable, evasions of the spirit would involve a prick of conscience and widespread condemnation. Legislators are often neither wise nor honest however, and thereby make the breaking of the letter of the law little more than a pastime . . . there is a moot question as to whether a law which deprives a man of inherent and fundamental property rights is not contrary to the supreme social law of survival." Professor Gras probably should be reminded, and I do not think that it represents the scholar crying from his ivory tower to call attention to this point, that there is a law above the property welfare of the individual which has always been recognized in the principle of the sovereignty of the state, and that it seeks the best *general* welfare from the long-run point of view. Departure from this latter point of view simply returns to the individual the right to decide by the law of claw and fang his own justice. Modern society has learned that it cannot live on a basis of absolute individualism, and Professor Gras is engaged in a fruitless attempt to turn back the clock of time in apparently yearning for the golden age of an earlier period when the business man was more free of Federal Trade Commissions and Interstate Commerce Commissions and the like.

"Often when the business man is accused of crime, he is meeting a racket carried on by his critics." This is true but it is also true that many of the leading rackets, including those operated nominally by politicians, exist because of the individual demands of business men. There is not a corrupt city in the United States in which the corruption of the politician has not been advanced by the demands of business men, including in some instances the representatives of leading corporations of the country. This, of course, does not prove that all business is corrupt. It does not prove that other people in society are any more honest than business men, but it does assert that no one should go overboard in his emotions about the honesty or the ethical desirability of any economic group in society, and this is just what Professor Gras has done.

On page 306 is reproduced, in the chapter on "Financial Capitalism," under a section headed, "Mistakes and Crimes in Business," a diagram which attempts to show the approximate volume of deviation from both rules and ideals in society. It starts with a large base of "non-business ethics," including sportsmanship, family ethics, citizenship, and religious precepts, moves up in pyramidal form to "business policy of firms," "business ethics," "business codes," "the spirit of the law," and finally, "the letter of the law." This represents, as he says, a tentative effort, but its usefulness seems to be debatable. To the reviewer it seems more likely to be productive of confusion than light.

Whether a reviewer agrees with the philosophy of an author may be considered significant only of a difference in point of view. Every review should, however, attempt to determine whether a contribution to the field has been made. Professor Gras has given perspective to the rise of the business man and in his historical review clarified the relationships of the stages of development of business. From this point of view, *Business and Capitalism* is a worthy contribution. And any economic study which arouses either serious enthusiasm or disagreement must have interesting qualities!

RONALD B. SHUMAN

University of Oklahoma

Timasheff, N. S., *An Introduction to the Sociology of Law*. (Cambridge: Harvard University Committee on Research in the Social Sciences, 1939, xiv, 418.)

This study is volume III in the Harvard Sociological Studies and is the result of studies, lectures, and previously published articles finally unified into a course in the sociology of the law given at Harvard University in the Department of Sociology. Some phases of the study were given in the form of lectures on sociological jurisprudence at the Polytechnical Institute in Petrograd in 1916-1920.

The scope of the study is very comprehensive, covering four major divisions: Part I, Sociology and Law; Part II, Ethics; Part III, Power; and Part IV, Law. The contention of the author is that sociology of the law is a distinct science and is not merely a phase of sociological

jurisprudence. This thesis is developed in Chapter II of Part I and is one of the most interesting and challenging chapters of the study. This chapter alone justifies the publication of the book. It includes as subdivisions: (1) Sociology and Law; (2) The Negative Approach; (3) The Sociology of Law and Jurisprudence; (4) Sociological Jurisprudence; (5) The Sociology of Law and the Philosophy of Law; (6) The Structure of the Sociology of Law; (7) The Sociology of Law and Psychology; (8) The Materials and Methods of the Sociology of Law.

In discussing the tendency of the law to establish uniformity in organized social groups, he points out that this results from similarity of conditions and from imitation. An illustration of the first is the constitutional law of the Kingdom of Aragon in the fifteenth century and that of Poland in the seventeenth and eighteenth centuries, calling attention in this connection to the "Privilege of Union" by which the noblemen were allowed to resist by arms the infringement of their liberties and the *liberum veto* by which any member in the Cortes in Aragon or in the Seim in Poland could defeat the passage of any bill which they disapproved. Illustrating the force of imitation, he points out the copying of Roman law throughout the Holy Roman Empire during the middle ages and the copying of the Napoleonic Code of 1804 by the continent of Europe during modern times.

His point in this connection from the point of view of the sociology of the law is that pre-established patterns of law tend to form the social order by coordinating individuals into an uniformity of behavior. From this illustration he does not mean to conclude that all social coordination is the result of law, recognizing that custom, morals and naked force play an important part and at times may even dominate social coordination. He thinks of social structure as organic in character.

He denies that sociology of law is just another name for sociological jurisprudence. Instead it is a separate science and seeks to establish generalizations which only vary like the laws of physics when new discoveries are made. It is nomographic in character in contrast with the ideographic nature of jurisprudence. It has a saving disposition like biology which studies the organic life of all species covered by botany and geology. It is especially concerned with the norms of conduct in contradiction with the description of concrete legal systems which belongs to jurisprudence.

His discussion of changes in law is most suggestive and could be read with profit by historians, political scientists and lawyers. He regards law as a historical product and an evidence of a cultural achievement. He is, unlike Comte, the founder of sociology, a friend of the law. Regarding the law as a cultural product, he does not believe that "social life without law is just as impossible as biological life without air," since there are primitive societies that know no law. He regards law as dynamic in nature but realizes that it has to overcome a social inertia in changing. Law is not law unless the favor of social change sanctions it.

His discussion of political power structures is interesting in the light of totalitarian tendencies and achievements as revolutionary agents of law-making in contrast with the national evolution of social forces as

determining and creative agencies of law. These power structures frequently become hierarchial and formidable. An illustration is the thirteen independent American states creating a new unity called the United States. By virtue of modern science, rapid communication and transportation, mechanized military equipment, approaching even automatization, tend to make these power structures more absolute and less likely of destruction than the loose organization of the feudalistic type. Hierarchy tends toward stability by virtue of facilitating control. He maintains that the only way to prevent decrepitude from entering hierarchy is to provide for new elements from its periphery to ascend to the position of dominance. This, he says, is the secret of the amazing and continued vigor of English social and political organization.

This book breaks new ground and creates new frontiers. It is not light reading, but it will pay good dividends to those who are capable of understanding it. It is a very significant study for social scientists.

C. PERRY PATTERSON

The University of Texas

Montgomery, R. H., *The Brimstone Game*. (New York: The Vanguard Press, 1940, pp. 108, \$1.25.)

Several men sat at a dinner table in Washington discussing the anomaly of economic monopoly in the American democracy. In the group were David Cushman Coyle, Stuart Chase, and R. H. Montgomery. The problem they were considering was pedagogical, though they would probably deny it: How to tell the story of monopoly so simply and so interestingly that it could be read and understood by that vast body of intelligent readers whose curiosity though considerable is not sufficient to overcome the obstacle of the usual economic terminology.

The author of this little book suggested that if the story were told in the language of draw poker, it would at once be readable and understandable. Either Coyle or Chase challenged the statement, probably on the reasonable ground that not many people understand all the fine points of poker. At any rate Professor Montgomery accepted the challenge and has presented an analogy between the sulphur monopoly and draw poker in *The Brimstone Game*.

The chapter titles are alluring, more suggestive of the savage ethics of poker than of the gentle but ever tightening grip of the business game. The content of the chapters are almost wholly concerned with monopoly and doubtless intended to give more information on business methods than on the strategy and tactics displayed at the green table. This is as it should be, though the reader may feel that the author went a little out of his way to get his analogy. Perhaps another disadvantage is that Professor is compelled to speak of monopoly as an observer, an outsider. His chapter titles, *Playing Cards*, *According to Hoyle*, *A Marked Deck*, *The British Open the Pot*, *Union Buys Chips*, *Freeport Horns in*, *The Morgans Raid the Game*, *House Rules*, *Orkla is Cold Decked*, and *Breaking the Bank* indicate that he has at least an academic acquaintance with the instrument used by the Irish father of *Scarlet O'Hara* to make of

him a southern slave and plantation owner and almost a southern gentleman.

In order to make his story clear Professor Montgomery selected a specific case. He chose sulphur as a useful example, partly, because Texas contains a large part of the world's sulphur deposits, partly because sulphur is a fairly small example of monopoly and appealed to Professor Montgomery's artistic sense. He loves these cameos because of their simplicity and perfection. As a monopoly, sulphur, if one may trust this Montgomery story, leaves little to be desired by those who admire completeness. The little yellow gem of brimstone set on the dark and enveloping garment of American monopoly adds a finishing touch to the ensemble.

Like poker, this story is impersonal. The author sticks to his etching and does not concern himself with individuals. There is scarcely a name mentioned in the book. No individual, therefore, can take offense. The book is intended for the general reader, has no footnotes and no bibliography. In thorough keeping with the monopoly it describes, it is a small book. The readers will have to decide which—the book or the monopoly—is less perfect.

W. P. WEBB

The University of Texas

Garrett, Julia Kathryn, *Green Flag Over Texas: A Story of the Last Years of Spain in Texas*. (New York and Dallas: The Cordova Press, 1939, pp. xv, 275.)

This is the story of the short-lived Gutierrez republic, told by one of Texas' ablest young historians, from new and important source material, gathered and, for the most part, located, by herself. Most unusual merit, also, in a competent research historian, Dr. Garrett is blessed with brilliant literary style. Under her superb handling, Bernardo Gutierrez de Lara, central figure of the Green Flag episode, becomes a human and understandable figure—a natural product of Escandon's settlement of the Rio Grande frontier. Her deft characterizations of Joaquin Arredondo and Ignacio Elizondo, the principal Spanish leaders, are equally happy and complete. Bernardo Bonavia, Juan Bautista Casas, Doctor John Hamilton Robinson, and William Shaler, who successively played their parts in the history of Texas, are rescued from oblivion, and made to live, by a few strokes each from Dr. Garrett's trenchant pen. The strange parts played in this odd drama by Ira Allen, aging hero of the American Revolution, and by Robinson and Shaler, undercover agents for the government of the United States, are Dr. Garrett's own discoveries and are now told for the first time.

Almost alone among Texas historians, Dr. Garrett's work is based on researches that have been equally adequate in the archives of the American government and in those of Texas, Mexico, and Spain. Her handling of this material is admirably proportioned; the viewpoint of Spanish officials, Spanish-Mexican settlers, Indian agents, American *filibusteros*, and accredited agents of the American government, falls each into its proper place. The Gutierrez episode is given, once and for all, its true international perspective; and historians who treat of it hereafter must

find themselves deeply in Dr. Garrett's debt. She has made the field peculiarly her own.

But this reviewer closes *Green Flag Over Texas* with the regret that its author, having done so much so well, did not see fit to do a little more. Her book will not find many readers outside the seminar for which it was originally written, competent to gather from her brilliant, but breathless, early chapters the background essential to an understanding of Texas as it was in 1812 and 1813. And in exploiting her treasure troves of newly discovered sources, she has unduly minimized the value of material previously known. Her book, as written, derives almost wholly from archive material; it is a glorified summation of the official reports. Official documentation is indispensable to the true historian, but official documents seldom reflect more than a small percentage of essential historical facts.

For the period of Dr. Garrett's study, this was peculiarly the case. The historical importance of the Green Flag episode lies not in governmental intrigues or in Arredondo's flare of energy, which saved Texas, momentarily, for Spain, but in that the setting up of the Gutierrez Republic was made possible by the marksmanship and hard fighting of a few American volunteers. For them there are no official sources, and the part played by them in her story, Dr. Garrett has largely ignored. This was, on the contrary, the very phase of the Green Flag invasion which interested President Lamar, who, with painstaking persistence, interviewed every survivor of the Gutierrez episode, American or Mexican, he was able to locate, and preserved his notes. Of this plenitude of meaty material, Dr. Garrett makes no use. The vital happenings at La Bahia, the Green Flag victory at Rosillo, and the furloughing and consequent loss to Gutierrez of nearly all of the veteran American volunteers, and the effect of that loss on Green Flag discipline and morale, receive merely nodding recognition as they pass. There is a very good story of the battle of the Medina; and the best account that has yet been written of the desolation wrought upon Texas, and the fatal effects of that desolation upon the future of Spanish and Mexican rule, by Arredondo's misuse of his success; but it is not easy to recognize, in the author's version, the picturesque battle of the Alazán. With all the brilliance of Dr. Garrett's writing, and the invaluable additions she has made to our knowledge of this first clash of the Anglican and Spanish civilizations on the border line of Louisiana and New Spain, her story, as written, is incomplete. For an understanding of the internal life of the Texas of this period, and of the men who were then its government, one must still depend on Mattie Austin Hatcher and Zebulon Pike; and for the intimate story of her *Guns of Liberty*, upon the hurried notes and cramped writing—and worse printing—of the invaluable material gathered by President Lamar.

HARBERT DAVENPORT

Brownsville, Texas

Macmahon, Arthur W., and Millett, John D., *Federal Administrators; A Biographical Approach to the Problem of Departmental Management*. (New York: Columbia University Press, 1939, pp. xiv, 524.)

Two factors in the approach of the authors of this book are noteworthy. First, a single theme underlies the whole treatise. This may be summarized as follows: there are two phases of departmental leadership, political and administrative; the first requires a flexible corps of aides to assist in the formulation and popularization of policy; the second requires a managerial group, the axis of which should be a single focal personality who would "direct the flow of command and integrate the work of a flexible group of supervisors." (p. vii) Second, the materials of study are biographical. Believing that "practice often runs ahead of theory," and that the "realization of an ideal" may "be found in the fulfillment of existing tendencies", (p. viii) the authors have presented in detail the background and functional position of departmental administrators.

The book is written in three parts. Part I is, in the reviewer's opinion, the most valuable contribution to the literature of national administration since the publication of the report of President Roosevelt's Committee on Management. It is rich in objective data, comment, and conclusion. The personal histories of a large number of administrative officials is in itself valuable data for the student of government personnel and administrative performance, but more significant is the cumulative force of the successive statements of functional position in substantiating the authors' conclusion that there is a definite tendency in departments toward the use of general managers, business managers, supervisory aides, and advisory aides. They argue in the concluding chapter of this part that it is time to crystallize these tendencies and make adequate provision for the four types of aides in all the departments. The first three types of aides would provide stable management, the last would strengthen the secretary in his political functions, the total effect would be progress toward departmental coherence.

Part II gives biographical sketches of all under secretaries and assistant secretaries in the departments since the creation of the positions. These sketches form the basis for the conclusion that "haphazard political considerations have been the outstanding factors in the selection" of these officers in most departments (p. 290) and for the recommendation that these "positions should be definitely disassociated from supervisory responsibilities" (p. 303). Moreover, the authors believe that the proper function of advisory aid would be emphasized if these officials were replaced by special assistants to the secretary.

In Part III there is a shift to the bureau level and an analysis of the background of bureau chiefs now serving. The purpose of this analysis is to show the extent of career tenure for bureau chiefs. Experience substantiates the authors' conclusion that career tenure is desirable for these "critical links in the managerial chain."

Students of public administration will recognize that this book is an elaboration of Professor Macmahon's special report to President Roosevelt's Committee on Management and his earlier articles on the bureau chief.

This more comprehensive publication will be welcomed generally by students of public administration. The authors have supplied more than a story of departmental administrators; they have given a comprehensive and searching analysis of the whole problem of departmental leadership. In this analysis theory has not merely followed experience, but has given form and meaning to developing practice. Though there is a tremendous amount of biographical data, it is set in a background of illuminating comment and general analysis; and it is the volume of case-histories that wins confidence for the authors' analysis of departmental needs.

EMMETTE S. REDFORD

The University of Texas

Coon, Horace, *American Tel. and Tel.—The Story of a Great Monopoly*. (New York: Longmans, Green and Co., 1939, pp. 276.)

It requires courage these days to undertake to write an impartial story of the world's greatest monopoly, especially when the industrial giant itself is one to which so much good can be credited and against which so many questionable practices can be charged. Yet Horace Coon has assumed the responsibility of telling the life story of the American Telephone and Telegraph Company, parent of the vast five-billion dollar Bell System, "the largest aggregation of capital ever controlled by a single company in the history of private business enterprise".

Born in the hey-day of laissez-faire when "the public-be-damned" attitude was common, American Telephone and Telegraph has had an exciting, if not romantic, career in developing what even its sharpest critics admit is the most efficient telephone service in the world at the lowest cost to subscribers. Most of the honor for accomplishing this remarkable feat, Mr. Coon credits to Theodore N. Vail, dynamic guiding genius in the formative period of the company's life. Vail consistently held that the interests of stockholders and subscribers were identical. To obtain good service the investor had to be adequately awarded. A. T. and T. can boast of a continuous, stable, and substantial dividend record. It can likewise point to an enviable labor relations record. "No strikes, nor even any serious labor controversies, have occurred in the Bell System since 1922."

An observation worthy of note is that this gigantic natural monopoly has been relatively free from government interference. "It is the most outstanding example of a business enterprise, frankly monopolistic, which has had little to fear from the powerful popular movement and the strong social critics of the last fifty years. During a period when trusts have been exposed, vilified, condemned, when political careers have been built on relentless opposition to all forms of monopoly, the Bell System has grown and prospered."

Compared with many other public utilities A. T. and T.'s record has been notably clean in the eyes of the public. It has never been guilty of pyramiding practices or stock-juggling schemes which characterized many public utilities in our time. With few exceptions the capital to support its phenomenal growth has come from within, either from earnings or

from the sale of more stock to its stockholders. Nor has A. T. and T. ever resorted to grossly stupid purchases of state legislatures and vulgar buying of public officials. "High among its negative virtues must be placed the skill with which the Bell executives have avoided entangling their companies in political scandals."

At times the giant has been tempted to dominate allied fields of communication; first the telegraph, then the radio, and finally sound pictures, but each time it has wisely withdrawn domination and contented itself with serving fifteen million telephone users.

Although Mr. Coon regards the Bell System as "a model of capitalistic deportment", he finds it the supreme example of the concentration of economic power—"more thoroughly organized than any feudal system". By the proxy method an inner group of forty-three, owning but one seventy-second part of the capital stock, controls the A. T. and T. Its president wields almost absolute power. Its rate-making practices, the author finds, are open to serious question, particularly in its depreciation policy and the charges made for equipment furnished its associates through the manufacturing subsidiary, the Western Electric Company. No state rate-making authority is powerful enough to regulate the Bell System because its holdings are too vast and its intercorporate practices too intricate.

The author seems to be torn between a sincere respect for A. T. and T.'s many virtues and an equally sincere belief that such a corporate giant should be regulated by Federal authority. Like many thinkers of our time, he contends that concentrated economic power is a real menace to democracy. "It is difficult to see how anybody who still believes in democratic processes can argue that such an economic empire as the Bell System should be left entirely unregulated."

ARTHUR A. SMITH

Southern Methodist University

Commodity Year Book, 1939. (New York: Compiled and published by the Commodity Research Bureau, pp. 616.)

The Consumers Research Bureau is primarily a private and independent service organization which analyzes commodities and their price movements for client subscribers. As stated in the preface, "This book was designed to fill a definite need for a comprehensive, up-to-date reference work on commodities. . . . The great volume of questions (about commodities and addressed to the Bureau) indicated clearly that there existed a pressing need for some adequate reference material on commodities. There were many publications covering one or two commodities and in some cases publications covered one or two groups. Nowhere was there an all-inclusive compilation. The solution was obvious—a year book to cover all the important commodities. . . . farm products, metals, tropical products, etc."

After an introductory section devoted to such topics as per capita consumption, governmental activities in commodities, understanding the future market, weights, measures and conversion factors, the volume

covers forty-seven commodities in seven groups: grains; textiles; tropical products; industrial products (other than textiles); fats, oils and oilseeds; livestock, dairy products and potatoes; and metals. In almost every case the commodities are the most important within these groups. Most conspicuous among those omitted are iron, coal and other sources of heat or power, forest products other than naval stores, and palm oil from the oils in group five. The discussion of each commodity includes sections on the history and background of the commodity and its production up to the present, a review of 1938, a tabular chronology of 1938, a line graph of average monthly prices for ten or more years, and tables of data on production, consumption, and prices, with annual figures for a series of years and monthly figures when important.

Both the tables and the text seem to be accurate and significant. However, some of the historical material is more interesting than valuable, many generalizations that economic geographers consider essential are omitted, and there are a few errors of fact. The section on hemp is confused. It contains errors such as the description of "Manila" production and other statements which, though true, will probably give erroneous ideas to readers unfamiliar with the industrial fibers. Since the data are not original and are obtained principally from governmental sources, the principal contributions of the volume are the analytical review of the commodity during 1938 and the tabular chronology of events summarizing that review for ready reference. It is also a convenient source of data, especially if one's library is poor in governmental and other statistical data, while its uniformity of treatment of commodities facilitates comparison.

MEREDITH F. BURRILL

Oklahoma A. and M. College

Dowd, Jerome, *The Life of Braxton Craven*. (Durham: Duke University Press, 1939, pp. xiii, 246.)

Braxton Craven, founder and first president of Trinity College (now Duke University), profoundly affected the characters of the great numbers of students whose lives touched his. One of these students, Jerome Dowd, eminent sociologist and student of life, pays especial tribute to the unusual qualities of the man, Braxton Craven, and at the same time extends a graceful courtesy to his Alma Mater, Trinity, in his latest book, *The Life of Braxton Craven*.

This is the life story of an orphan boy with very limited opportunities, who grew into a man of rich natural endowments and great capacities for moral and intellectual leadership. Striking out for himself when only sixteen years of age, Craven opened a subscription school, where he taught his first twenty-five or thirty pupils in a log school house. Through great industry he constantly broadened the scope of his own education and his influence in shaping the lives of others. He early "knew his mission and supported it with resolution". "To make men" was the one ambition that governed his whole life.

"At the age of thirty-seven, Braxton Craven had established Trinity

College and become its president. The establishment and management of a college of high rank through one person's initiative and unceasing toil was extraordinary". Trinity grew and prospered until the tragedy of the Civil War closed its doors. After the War, Craven reopened the school and fought with all his strength, courage, and personal wealth to build it back. He succeeded so well that, in Professor Dowd's opinion, Braxton Craven played as important a part as an educator in North Carolina as Horace Mann in Massachusetts.

This sympathetic life record of a pioneer in Southern education is delightfully written biography. In concrete form, it presents the problems which every man must face, and gives the detailed example of one "stalwart" who met them courageously. It is in effect a case study, approached through the medium of biography.

The author has said that "a biography has value only in the degree that it enables the reader to enter fully into the feeling and thought of the character portrayed". And Professor Dowd has admirably fulfilled his own requirements for good biography. He has done more—he has left Braxton Craven a living, breathing image in the mind of the reader, and a life inspiration as well.

WYATT MARRS

University of Oklahoma

Wittke, Carl, *We Who Built America*. (New York: Prentice-Hall, Inc., 1939, pp. xviii, 547.)

The sub-title of this book "The Saga of the Immigrant" is a good index of its content and purpose. It is as complete a treatment of the American immigrant as has ever appeared, and it is a saga, as both its title and sub-title indicate, in that it is frankly favorable to the immigrant and laudatory regarding the part which he plays in the development of America.

The book deals with only the non-English immigrants. It is divided into three parts. First, the colonial period which, in view of the country's youth, the immigrant affected more deeply than any other period. The immigrants which were most numerous in the colonial period were the Dutch, French, Irish, and Germans.

Part two deals with "The Old Immigration." The Irish and the Germans led the immigrants in this period with the Scandinavians running closely behind. The casual reader will be surprised, however, to discover the large part which the Swiss, Dutch, Russian-Germans, Welsh, French, and Jews played in this period. It was then that the immigrants came to America who made the greatest cultural contribution to our society. The author presents an interesting chapter on the philosophy of social and economic reform which the old immigrants brought to the United States.

Part three of the book deals with "The New Immigration and Nativism." The new immigration shifts emphasis to the Slavic, Italian, and Baltic immigrants. The Italians came in such numbers as to overshadow all

other immigrants in the later period. For example, there are today more people of Italian birth in New York City than there are in Rome. An interesting commentary on the nature of the new as compared to the old immigration is that the old Scandinavian, German, and Irish immigration moved inland, whereas the later South European immigration settled in urban and industrial centers.

The attitude of the native American toward the immigrant was always highly critical, and the author shows the remarkable similarity between the protest sent up against the bloody Irishmen of the 1850's and the "dago" and "wop" of the period after 1900. The last chapter deals with restrictions which have been placed upon immigration.

The book is a veritable storehouse of information about individual immigrants and the value of the information about individual persons is buttressed by an excellent index.

JOSEPH M. RAY

North Texas State Teachers College

Rankin, Robert S., *When Civil Law Fails*. (Durham: Duke University Press, 1939, pp. viii, 224.)

When and under what conditions military force may with justification be employed by democratic government against its own citizens has always been one of the most perplexing problems of political science and law. The use of martial law in the United States has occurred at times of great tension; court decisions regarding it have often faced hostile public opinion.

As with most governmental authority the key to the problem is to be found in the degree to which the social necessity requires extraordinary steps. To the due process clause, however, must be added the specific delegation to Congress of war powers, and the powers of like nature which the Supreme Court has held to belong properly to the states.

Professor Rankin's treatise is a close-knit and lucid presentation of the subject, well-documented, and giving evidence of a complete mastery of the sources. The bibliography, which he modestly labels "select", would in itself make this volume an indispensable item for the student of American government. Although the strictly legal phases of martial law are handled with complete competency, Professor Rankin has not limited his discussion to a review of decisions, but has throughout insisted on correlating them with the historical background, the broader political implications, and the gradual development of the concept of martial law itself.

Andrew Jackson's famous controversy over the use of martial law in New Orleans, Dorr's Rebellion in Rhode Island, the Civil War case of *ex parte Milligan*, and the use of qualified martial law in modern times to meet economic emergencies, are the main general divisions into which the book falls. There are chapters, too, on martial law and the writ of habeas corpus, the World War period, and the position of state officers who declare and execute martial law.

The use of martial law in industrial disputes is a particularly important phase of the problem, and receives thorough treatment. Southwestern

scholars will be interested too, by the attention given to the proclamations of martial law in Oklahoma and Texas by Governors Murray and Sterling in carrying out proration of the oil fields. The various cases in the state and federal courts hinging about this experiment are examined, including especially *Sterling v. Constantin*, which went far to limit the freedom of the executive in such emergencies.

OLIVER E. BENSON

University of Oklahoma

Cole, G. D. H., and Postgate, Raymond, *The British Common People, 1746-1938*. (New York: Alfred A. Knopf, 1939, pp. viii, 588, xxxiii.)

This book, as the title indicates, deals with the history and progress of the common people of Great Britain for the past two centuries. It records the part the average man has played in the life of a nation whose population increased during that time from 8,000,000 to over 46,000,000. It describes their social, economic, and political activities during the period.

The term "common people" is used by the authors to include not only the farmers and urban workers, but the great working class. The book contains an enormous amount of factual data on democratic and radical movements, trade unionism, and economic development, woven nicely together by the authors to make a history of social progress. It is well organized and readable.

After two hundred years the wealth of the British upper classes was undiminished. There were periods when the proportion of manual workers and "proletarians" generally to the total population was slightly reduced and the proportion of salary-earners above the working-class standard increased, and also there was some shifting among the manual workers to better-paid occupations. But there was no substantial alteration of the class structure as between rich and poor. By 1938, "two thirds of the adults who died still left less than 100 pounds worth of possessions" and "one half of 1 per cent of the receivers of income got 16 per cent of the total income of the nation."

The authors have made an important contribution to modern social history. A similar study on the common people of the United States would be timely.

GARNIE WILLIAM MCGINTY

Louisiana Polytechnic Institute

Federal Writers' Project of Oklahoma (Labor Editor, Clyde Hamm), *Labor History of Oklahoma*. (Oklahoma City: A. M. Van Horn, 1939, pp. 120.)

At the time of Oklahoma's admission to the Union in 1907, the labor movement as well as the general reform spirit of populism was on the increase, as revealed in the state constitution. In this volume we have a detailed labor history of a state whose annals in that field have been brief but significant.

Sponsored by State Labor Commissioner Pat Murphy, and written by members of the Oklahoma Federal Writers' Project, the survey was produced in cooperation with a publication committee consisting of representatives of labor and farm organizations and students of labor problems. It begins with the story of the conditions in the McAlester coal fields in early territorial days, the organization of the first miners' local of the Knights of Labor in 1882, and carries the early record through statehood, and the "twenty-four demands" drawn up by the Twin Territorial Federation of Labor in cooperation with the Farmers' Union and the railroad brotherhoods—demands to which most of the delegates elected to the constitutional convention were pledged in advance.

More recently, there is the description of the ill-fated Green Corn Rebellion, and of the Coronado case, resulting in the dissolution of District 21 of the United Mineworkers of America. The sections on agrarian movements, on unemployed organizations during the depression, and on the current labor scene, are particularly noteworthy.

Well-written throughout, the book fills a pressing need for an adequate history of Oklahoma labor problems. It will serve as a useful companion to F. L. Ryan's history of Oklahoma labor legislation. The editors are to be congratulated on their selection and arrangement of material. An appended chronology and bibliography reveal a quantity of research of which the finished product is the best evidence.

OLIVER E. BENSON

University of Oklahoma

BOOK NOTES

Milton Gilbert in his *Currency Depreciation and Monetary Policy* (Philadelphia: University of Pennsylvania Press, 1939, pp. xlii, 167) seeks to discover "the causes and the consequences of the recent wave of currency depreciation" in order "to provide a background for assessing the role of exchange manipulation in monetary policy." For the purpose he analyses mainly the experience of Australia, Great Britain, Sweden and the United States, and, incidentally, those of France. He cannot accept the conclusion of some others that this recent wave of currency depreciation is evidence of a breakdown in the international gold standard and that existing economic conditions have made impossible the maintenance of gold parties. However, he takes the position that the concept of "the gold standard does not touch the fundamental problem of monetary policy but rather obscures it." Apparently he is in accord with those who think that it is desirable to shift the emphasis in monetary policy from the maintenance of fixed exchanges to that of internal stability. He recognizes the usefulness of "exchange manipulation" as an instrument of monetary policy. To him the guide to an exchange policy is the condition of balance of payments. And, in whatever adjustment in exchange rates are made, he holds that the aim should be to maintain such an equilibrium in the balance of payments as will avoid either an internal deflationary pressure by the loss of currency reserves or a deflationary pressure abroad by the accumulation of currency reserves.

I. J. S.

The literature relating to the assimilation of the immigrant has been added to very materially through the publication of William C. Smith's *Americans In the Making*, (New York: Appleton Century, 1939, pp. xvii, 454). Professor Smith approaches the subject fundamentally from the angle of conflict in culture and the resultant adaptations and assimilation of the various nationality groups in this country. Three chapters are devoted to the study of causes of immigration. A very interesting consideration following discussion of causes is the section devoted to the immigrant's first impression of this country. The documentary statements and quotations revealing social attitudes toward both the old country and the recently adopted country reveal to an unusual extent the emotional conflicts aroused in the recently arrived immigrant. Another different approach to the problem of assimilation of the immigrant is to be found in a chapter devoted to the role children of immigrants play in the assimilation of their parents. Of fundamental importance is an appraisal of the immigrant's contribution to American culture. On account of widespread bias and prejudice this particular phase of the immigrant American has been largely neglected in past treatises. The volume should find wide use both as a text book for courses in immigration and for references in sociology.

J. J. R.

Students of liberal ideas will be interested in a new book entitled *Democracies Today and Tomorrow* written by the former President of Czechoslovakia, Eduard Benes, and recently added by Macmillan and Company to the mass of literature which has accumulated around the problem of the future of the democratic state in the contemporary world. Mr. Benes' book makes a significant contribution to this material in so far as it discusses and analyses the reasons for the downfall of the post-war democracies in Europe. In this respect the author was in a privileged position from which he was able to view at first hand the disintegration of the democratic structure in Central and Eastern Europe. The chapter on modern anti-democratic ideologies and European Democracy is both interesting and penetrating in its analysis. The other chapters, although sound in essence, contribute nothing new to the current ideas about democracy and its problems. The author is, however, to be complimented for his ability to refrain throughout his book from attacking personalities or advancing his own or his country's grievances against particular governments or political leaders. The book itself is the result of a series of lectures delivered by the author at the University of Chicago in 1929 and suffers from the defect (at least in this reviewer's opinion) of not having been properly revised and unified prior to publication.

H. M. M.

John Eloy Boodin's *The Social Mind: Foundation of Social Philosophy*, (New York: The MacMillan Company, 1939, pp. 593), develops in concrete detail the social philosophy of one of America's more systematic, speculative thinkers. Like the author's other books familiar to the reviewer it is

written somewhat in the grand manner, being devoted to synthesis and theoretic construction rather than to analysis. As Professor Boodin points out in his preface, two conceptions are fundamental to his theory, e. g., the concept of "wholism" and that of "creative synthesis" or "emergence". In line with these theoretic preconceptions he seeks to show (1) that social phenomena, while continuous with their bio-physical conditions, have genuine and distinctive features, e. g., are emergent phenomena, and (2) that they exhibit the "gestalten" principle, i. e., have the character of complex wholes. Whether the reader agrees with Professor Boodin or not he will be stimulated and enlightened by his book. It should be recommended especially to those benighted souls who erroneously believe that to be scientific we must be devotees of the "nothing but" principle, i. e., must reduce complex phenomena to their hypothetical conditions.

G. G.

Professor Roger H. Wells in his recent work entitled *American Local Government* (New York and London: McGraw-Hill Book Company, 1939, pp. xii, 200), presents an up-to-date, overall analysis and view of city and county government as it now exists. The author combines here to good advantage comprehensiveness with brevity. While the volume carries little new in the way of material presented or interpretation thereof, it is somewhat unorthodox as to method of presentation and organization of the materials used. Chapter I treats of local government today; Chapter II, the citizen and his local government; Chapter III, areas and forms of local government; and Chapters IV and V, the relation of the local government to the state and Federal governments respectively.

S. A. M.

Professor Charles Aiken of the University of California has recently published through John Wiley and Sons an edited collection of cases having to do with the National Labor Relations Board. Starting with the now classic case of *NLRB vs. Jones* (1937), Professor Aiken carries his survey through *NLRB vs. Fainblatt* (1939). By omitting insignificant decisions and by a judicious selection of the pertinent parts of the remainder, Professor Aiken has produced a work which, in addition to giving a unified history of the development of the legal position of the National Labor Relations Board, will at the same time serve as an excellent handbook for class use in courses dealing with Administrative and Constitutional law, or with the relation between governments and business. The text of the NLRA together with a bibliography are included as an appendix.

H. M. M.

Under the title *A Century of Social Thought* (Durham, N. C.: Duke University Press, 1939, pp. vi, 172), a series of seven lectures delivered at Duke University during the academic year 1938-1939 as part of the centennial celebration of that institution has been published by its press. There are lectures dealing with the progress of the past one hundred

years in education, economics, religion, science, jurisprudence, sociology, and urban planning. The lecturers included Drs. C. H. Judd, Harold G. Moulton, Henry S. Coffin, John C. Merriam, P. A. Sorokin, Dean Roscoe Pound, and Mr. Robert Moses, Commissioner of Parks for New York City. The subjects of most of the lectures are too vast to be treated otherwise than sketchily in the limited time apparently allowed each lecturer.

E. E. H.

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